

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL NO. 03-836

3 UNITED STATES OF AMERICA :

4 -VS- :

5 WILLIAM BASKERVILLE, :

6 Defendant. :

7 :

TRANSCRIPT OF PROCEEDING

Trenton, New Jersey
May 8, 2007

10

B E F O R E:

13

THE HONORABLE JOEL A. PISANO
UNITED STATES DISTRICT COURT JUDGE

15

A P P E A R A N C E S:

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For the Government.

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For the Defendant.

Pursuant to Section 753 Title 28 United States
Code, the following transcript is certified to be
an accurate record as taken stenographically in the
above-entitled proceedings.

24

Joanne M. Caruso, CSR, CRR
Official Court Reporter

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	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
	JOHN GAY				
	By Mr. Minish	6257		6282, 6308	
	By Mr. Herman		6264		
	SHAWN MANSON				
5	By Mr. Minish	6294			
	PAUL DAVIS				
	By Mr. Minish	6311		6323	
7	By Mr. Kayser		6318		
	JOHNNIE DAVIS				
	By Mr. Frazer	6334			
	LAKIESHA WILSON				
10	By Mr. Frazer	6345			
	NIESHA MC CRAY				
	By Mr. Frazer	6351			
	SHAWN MANSON				
13	By Mr. Minish	6367			
14					
15					

	EXHIBIT	DESCRIPTION	EVD.
	P-3	Arrest Record	6312
	P-52	Photo	6357
	P-50	Photo	6358
	P-51	Photo	6376
	P-15A & B	Presentence Report	6376
	P-30 through 35	Documents	6377
	P-37, 19, 1, 4,	Documents	6377
	P-16 through 18	Documents	6377
	P-11, 12 and 15	Documents	6377
22			
23			
24			
25			

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6225

May 8, 2007

Page 2

DNJ 03-836 Vol 11
2 THE CLERK: All rise.
3 (The following takes place out of the presence of the
4 jury.)
5 THE COURT: Good morning.
6 Have a seat, relax.
7 Yes, Mr. Minish?
8 MR. FRAZER: We have two very brief issues. I handed
9 counsel, and I have a cases of cites and blurbs and what their
10 holdings are regarding the issues of juvenile adjudications
11 being used. I haven't found one that said it can't be used.
12 THE COURT: Okay.
13 MR. FRAZER: Secondly, we just want to raise, John
14 Gay is the first witness and I think we touched on this
15 briefly that there wouldn't be any questions from the defense
16 regarding pending investigations. Obviously, Mr. Gay can't
17 talk about the facts of pending investigations.
18 THE COURT: Okay.
19 MR. FRAZER: We don't want the question to be asked
20 and him say I can't answer it. I assume it's not relevant and
21 wouldn't be asked.
22 THE COURT: Any problem with that?
23 MR. HERMAN: Nothing beyond today. Whatever is
24 charged as of today.
25 THE COURT: Okay.

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6226

1 MR. FRAZER: Right. That's it.
2 MR. HERMAN: I got a call from Mr. Minish at 6:30
3 last night on my cell phone, a message that they were seeking

4 to introduce from Shawn Manson the fact that Horatio Joines
5 had been threatened or intimidated and he gave me two other
6 names. I don't know whether the Government intends to go into
7 it.

8 I got some discovery first thing this morning about
9 Horatio Joines, nothing about him being intimidated. There's
10 information about another potential name, Mark Joseph being
11 called to the Grand Jury, nothing about him being intimidated.

12 I don't want them to go into it in their opening
13 unless your Honor believes there's a basis for it.

14 MR. MINISH: The proffer, Judge, is basically what I
15 told Mr. Herman yesterday. He's mischaracterizing it a little
16 bit.

17 The idea is basically that Shawn Manson will testify
18 to the idea of the impact that the defendant's actions had on
19 her case, which included the lack of willingness of Horatio
20 Joines to testify based on what happened, the lack of
21 willingness of Mark Joseph to testify and Eric Dock unwilling
22 to testify when and until his family was moved to safety.

23 I think that very clearly goes to obstruction of
24 justice under that.

25 THE COURT: Well, but you have to get -- what's the

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6227

1 basis for her conclusion that they were unwilling to testify?

2 MR. MINISH: They told her.

3 THE COURT: They told her what?

4 MR. MINISH: I am unwilling to testify.

5 THE COURT: Okay.

6 But why?

7 MR. MINISH: I am unwilling to testify because I am
8 afraid of the defendant.

9 THE COURT: Were they -- are -- is she going to give
10 testimony that they told her they're unwilling to testify
11 because they're afraid because somebody on behalf of William
12 Baskerville intimidated them?

13 MR. MINISH: No, because of the defendant's specific
14 act of having Kemo killed, that that spill-over effect of that
15 --

16 THE COURT: Based on the circumstances of the case,
17 they were reluctant to get involved?

18 MR. MINISH: Exactly.

19 MR. HERMAN: Well, Judge, frankly, we're hearing
20 about this for the first time. We have been asking for
21 discovery for a week. There is no documents which support
22 that, so I don't -- I ask it be excluded.

23 We haven't had a chance to investigate that. I have
24 been on the phone with Horatio Joines' lawyer on and off
25 during the course of this case. That's never come to my

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6228

1 attention.

2 I don't know, I learn about this at 6:30 the night
3 before we're supposed to start the penalty phase. Mark Joseph
4 I think is in Haiti, that's my understanding. He's not even
5 in the country. No?

6 We talked about -- they said they don't have a chance
7 to rebut something. How can we do any investigation? I think

8 they should be precluded or put this off a week and we'll fly
9 to Haiti and talk to Mark Joseph and see whether --

10 THE COURT: Is it true that you told defense about
11 Horatio Joines and Mark Joseph's reluctance to testify last
12 night? Is that true?

13 MR. MINISH: That is true.

14 THE COURT: Then you're not to open on it, on Mark
15 Joseph or Horatio Joines' reluctance to testify and you're not
16 to get into it with Agent Manson.

17 MR. MINISH: Judge, I think before your Honor rules
18 in that manner, we have to be a little realistic about what
19 we're talking about here.

20 THE COURT: We have to be realistic? Go ahead, Mr.
21 Minish, let's be realistic.

22 MR. MINISH: What happened here is that I spoke with
23 the agent last night. We went through penalty phase number
24 one, which we would not have had Agent Manson's testimony. We
25 were preparing as best as we can, we provided information

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6229

1 immediately.

2 The information I got came yesterday after the phone
3 call. As soon as I got off of the phone with the agent, I
4 asked her what, if anything, can she speak to about
5 obstruction of justice or things along those lines? This is
6 what she told me.

7 THE COURT: I'll tell you what we'll do. Don't open
8 on it. When Agent Manson testifies, don't get into Mark
9 Joseph or Horatio Joines with her. We'll finish what's going

10 on today and if you want to bring Agent Manson back out of the
11 presence of the jury, we'll hear about this.

12 MR. MINISH: Certainly we wouldn't have an objection
13 to defense counsel now spending as much time as they wish
14 interviewing her personally.

15 THE COURT: That might have to be done, but let's
16 find out what she has to say, but I'm not just going to launch
17 into this in front of the jury when it comes so late,
18 literally late in the day. That's what we're going to do.

19 MR. MINISH: Just so you know, at this point I think
20 we should not call Agent Manson at all because that's largely
21 her testimony. The ruling should be made, I guess
22 realistically if your Honor wants to speak to her outside the
23 presence of the jury, that should be done prior to her
24 testifying at all.

25 THE COURT: Okay.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6230

1 Put everybody else on and then we'll talk to Agent
2 Manson while the jury has lunch. We'll do something like
3 that.

4 MR. MINISH: That's fine.

5 THE COURT: Okay?

6 All right, Mr. Herman?

7 MR. HERMAN: Thanks, Judge.

8 THE COURT: Let's get the jury, the alternates are
9 out there.

10 You have been given a draft -- you have been given my
11 intended charge on the introductory instructions as to stage

12 two.

13 Any objections to these?

14 MR. FRAZER: No, Judge.

15 THE COURT: All right.

16 MR. FRAZER: I assume there's none from the defense
17 as well, your Honor?

18 THE COURT: I'm asking.

19 MR. HERMAN: No.

20 THE COURT: I'm not hearing anything.

21 MR. HERMAN: No.

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6231

1 THE CLERK: All rise.

2 (The following takes place in the presence of the
3 jury.)

4 THE COURT: Good morning, folks.

5 Where are the alternates?

6 In the jury box, please.

7 Good morning, folks.

8 Sorry for the delay in getting started, but there
9 apparently was some troubles on the highways here and some
10 folks who are necessary couldn't get here any earlier. We
11 apologize for that.

12 I'm told by counsel that what needs to be done today
13 can be done even though we've had a delayed start. We're

14 going to get started right now on what is continuing with the
15 penalty phase of this trial, what I'm referring to as stage
16 two or the penalty selection phase.

17 Again, so you have an idea of what we're doing today,
18 we're going to be giving you preliminary instructions which
19 will be about the same length as the preliminary instructions
20 I gave you yesterday.

21 You're then going to have very brief opening
22 statements from counsel and then the Government will be
23 introducing some further information, some further evidence
24 and you may hear the testimony of some witnesses.

25 I'm going to give you some preliminary instructions

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6232

1 as to stage two, the penalty selection phase, penalty
2 selection stage of the penalty phase of this trial.

3 Now, in the eligibility stage of the trial which you
4 conducted yesterday, you found the defendant, William
5 Baskerville, eligible for consideration of a death sentence on
6 the following counts of the indictment: Count one,
7 conspiracy to murder a witness and count two, conspiracy to
8 murder a witness in retaliation against an informant.

9 Therefore, in this penalty selection stage you must
10 now consider whether or not a sentence of death or the
11 sentence of life in prison without the possibility of parole
12 should be imposed for commission of these crimes.

13 Again, this decision is left under our law
14 exclusively to you, the jury. If you find that a death
15 sentence should be imposed on either count one or count two, I

16 am required to impose that sentence. However, you are never
17 required to impose a death sentence on either count and if you
18 find that the death sentence should not be imposed on either
19 count, then I will impose a sentence of life imprisonment
20 without the possibility of parole for that count. That's why
21 I'm calling it the penalty selection phase, because you've got
22 to choose one or the other.

23 In these instructions, I'm going to introduce you to
24 some of the factors that you must consider and some of the
25 issues that you must decide in determining which sentence

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6233

1 shall be imposed. At the end of this stage of the trial, I'm
2 going to give you some additional written instructions on
3 these matters. You must consider these and all the
4 instructions I gave during the penalty phase as a whole.

5 Again, definitions of terms are intended to apply
6 throughout the penalty phase of the case. I'm instructing you
7 that you're to consider the two sets of instructions I gave
8 you yesterday as a whole with all of the legal instructions
9 I'm giving you today and the legal instructions that I will
10 give you at the conclusion of the selection stage, probably
11 Thursday morning.

12 You must consider all of those instructions as a
13 whole and again, the definitions that I've provided to you
14 apply throughout the penalty phase of the case. I do that so
15 I don't have to repeat the definitions over several times.

16 Now, as to the nature of these proceedings, you must
17 give separate consideration to whether a sentence of death or

18 a sentence of life in prison without the possibility of parole
19 should be imposed on each count, count one or count two, on
20 which you have found the defendant eligible for consideration
21 of the death sentence.

22 Therefore, you must return a separate penalty verdict
23 on each count. Your determination of which sentence to impose
24 on a particular count will proceed in three steps which I'm
25 going to explain briefly now.

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6234

1 You may remember yesterday I told you that the death
2 penalty laws is written in such a way that a jury has to
3 narrow and focus on various issues and I told you that there
4 would be a sequence in which your decisions would have to be
5 made. We're getting further into that sequence now and I tell
6 you there are three separate steps during the penalty
7 selection phase.

8 Now, these steps that I'm going to explain to you
9 will require you to consider whether certain aggravating
10 factors or mitigating factors exist in this case. These
11 factors concern the circumstances of the crime or the personal
12 traits, character or background of Mr. Baskerville, and the
13 effect of the offense on the victim and the victim's family.

14 The word "aggravate" means to make worse or more
15 offensive or to intensify.

16 The word "mitigate" means to make less severe or to
17 moderate.

18 An aggravating factor then is a factor or
19 circumstance that would tend to support the imposition of the

20 death penalty. A mitigating factor, on the other hand, is any
 21 aspect of the defendant's character or background, any
 22 circumstance of the offense in question or any other relevant
 23 fact or circumstance that might indicate that the defendant
 24 should receive a sentence of life in prison without the
 25 possibility of parole instead of the death sentence.

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6235

1 The three steps that you must go through to make your
 2 final determination of which sentence should be imposed on
 3 each count are the following: Step one, you'll be
 4 considering what we call non-statutory aggravating factors.
 5 In step one, you must consider whether the prosecution has
 6 proved beyond reasonable doubt one or more non-statutory
 7 aggravating factors.

8 These aggravating factors are called non-statutory
 9 because they are not identified by the death penalty law,
 10 although they are identified by other applicable law.
 11 Remember yesterday, I instructed you about statutory
 12 aggravating factors which are specifically held and
 13 specifically provided for in the death penalty law. We're now
 14 talking about, in step one, non-statutory aggravating factors.

15 In this case, the prosecution contends that the
 16 following non-statutory aggravating factors will be proved.
 17 They are three: One, obstruction of justice; second, future
 18 dangerousness; third, victim impact evidence.

19 You may consider in step three, that we'll be getting
 20 to, any non-statutory aggravating factor that you unanimously
 21 find that the prosecution has proved beyond reasonable doubt.

22 Now, step two is the consideration of mitigating
23 factors. In step two, you must consider whether the defense
24 has proved by a greater weight of the evidence any mitigating
25 factors. Now, I just used the phrase -- you have been hearing

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6236

1 all about the Government's burden of proof beyond reasonable
2 doubt. When considering mitigating factors, you should note
3 that there is a different and lesser burden of proof on the
4 defense to prove mitigating factors. That is by a greater
5 weight of the evidence or by preponderance of the evidence and
6 I'm going to define those terms in my final instructions to
7 you.

8 You are specifically instructed that the following
9 list of mitigating factors is only preliminary. Defense
10 counsel have indicated that there is going to be the
11 introduction of evidence and testimony on these mitigating
12 factors. They've given me a preliminary list of those and I'm
13 going to give them to you.

14 Now, the defense may ultimately assert that there are
15 more, fewer or different mitigating factors for you to
16 consider. I'll give you a final list of mitigating factors in
17 the final instructions for this stage. However, as a
18 preliminary list, Mr. Baskerville contends that the following
19 mitigating factors would be proved in this case by the greater
20 weight of the evidence: One, that if Mr. Baskerville is not
21 executed, he will spend the rest of his life in a federal
22 prison without the possibility of release. By the way, this
23 is a list of 12 factors. That's the first one. Second, Mr.

24 Baskerville did not personally shoot Kemo McCray; third, the
25 individual who shot and killed Kemo McCray, Anthony Young,

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6237

1 will not be sentenced to death and may not even receive a life
2 sentence; four, others responsible for contributing to the
3 death of Kemo McCray have not been charged with murder or any
4 other crime associated with his murder; five, based upon his
5 prison and jail record, it is unlikely that Mr. Baskerville
6 will present any risk to prison officials or other inmates if
7 he is sentenced to life in prison without the possibility of
8 release; six, Mr. Baskerville is a loving father to his three
9 children, Keli ah, Assad and E'nyah, who will suffer grief and
10 loss if he is sentenced to death; seventh, the growth and
11 development of Mr. Baskerville's three children will be
12 adversely affected if he is executed; eighth, there are a
13 number of Mr. Baskerville's family members who will suffer
14 grief and loss if he is executed; ninth, there is lingering
15 doubt about Mr. Baskerville's specific intent, although it
16 does not rise to the level of reasonable doubt; 10th, Mr.
17 Baskerville grew up in a home without a constant or positive
18 father figure, with an often absent mother and was left as the
19 oldest child to be a parental figure to his six siblings;
20 11th, Mr. Baskerville's childhood was characterized by
21 poverty, frequent moves and wasn't an unstable home environment;
22 12th, Mr. Baskerville's life will have value to others if he
23 is sentenced to spend the rest of his life in prison without
24 the possibility of release.

25 Now, in addition to these mitigating factors, you may

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6238

1 also find as an additional mitigating factor any residual or
2 lingering doubts that any of you have as to Mr. Baskerville's
3 guilt or innocence or his role in the offense in determining
4 whether or not to impose the sentence of death, even though
5 those doubts did not rise to the level of reasonable doubt
6 under the instructions that I gave you during the guilt phase
7 of the trial.

8 Finally, you are permitted to find anything else that
9 is established by the greater weight of the evidence or the
10 preponderance of the evidence about the commission of the
11 crime or about the defendant's background or character that
12 would mitigate in favor of a sentence of life imprisonment
13 without the possibility of release and against the death
14 penalty, whether or not specifically argued by defense
15 counsel.

16 Now, unlike aggravating factors which you must
17 unanimously find have been proved beyond reasonable doubt, the
18 law does not require unanimous agreement with regard to
19 mitigating factors. Any juror who finds the existence of a
20 mitigating factor must personally consider it in this case
21 regardless of the number of jurors who agree that the factor
22 has been established. Furthermore, any juror may consider a
23 mitigating factor found by another juror, even if the first
24 juror did not find the factor to be mitigating.

25 Now, into step three, weighing of the factors. In

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1 step three for each count, you must personally consider
2 whether one or more statutory aggravating factors that you
3 found for that count during the eligibility stage yesterday,
4 together with any of the non-statutory aggravating factors for
5 that count that you find to exist in step one that I've just
6 described to you above, taken together sufficiently outweigh
7 any mitigating factors that you may find in step two, so that
8 a sentence of death is justified for that count.

9 In the absence of any mitigating factors, you must
10 consider whether the aggravating factors are themselves
11 sufficient to justify a sentence of death.

12 Based upon your weighing of all the factors, you will
13 decide whether to impose a sentence of death or a sentence of
14 life imprisonment without the possibility of parole for the
15 count in question. Furthermore, you must not simply count the
16 number of aggravating factors or mitigating factors to reach
17 your decision. Rather, you must consider the weight and value
18 of each factor. Regardless of your findings with respect to
19 aggravating factors and mitigating factors, you are never
20 required to impose a death sentence.

21 Your determination of the appropriate sentence for
22 each count is a decision that each of you must make
23 independently, after consulting with your fellow jurors and
24 individually engaging in the weighing process that I've
25 described in this instruction. You cannot consider imposing a

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1 death sentence unless and until you personally find that the
2 aggravating factors outweigh the mitigating factors or in the
3 absence of mitigating factors, that the aggravating factors
4 are themselves sufficient to justify a sentence of death.

5 A determination to impose a death sentence must be
6 unanimous. If you each find that a death sentence should be
7 imposed for a particular count, then I am required to impose a
8 death sentence for that count. On the other hand, if, after
9 weighing the aggravating factors proved in the case, and all
10 of the mitigating factors found by any juror, any one of you
11 finds that a sentence of death is not justified on a
12 particular count, then the death sentence cannot be imposed on
13 that count and I will impose a sentence of life imprisonment
14 without the possibility of parole for that count.

15 In making all of the determinations that you are
16 required to make in this penalty phase of the trial, you may
17 consider any evidence that was presented during the guilt
18 phase as well as evidence that is presented to you in the
19 penalty phase. In deciding what the facts are, you may have
20 to decide what testimony you believe and what testimony you do
21 not believe. You may believe all of what a witness says, only
22 part of it or none of it.

23 In deciding what testimony to believe, consider the
24 witness' intelligence, the opportunity the witness had to see
25 or hear the things testified about, the witness' memory, any

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6241

1 motives that witness may have for testifying a certain way,
2 the manner of the witness while testifying, whether that

3 witness said something different in an earlier time, the
4 general reasonableness of the testimony and the extent to
5 which the testimony is consistent with any evidence you
6 believe.

7 In deciding whether or not to believe a witness, keep
8 in mind that people sometimes see or hear things differently
9 or forget things. You need to consider, therefore, whether a
10 contradiction results from an innocent misrecollection or
11 sincere lapse of memory or instead from an intentional
12 falsehood or pretend lapse of memory.

13 The task of determining whether to impose a death
14 sentence or sentence of life in prison without the possibility
15 of parole for any count in this case is an extremely important
16 one. Therefore, please keep an open mind until you've heard
17 all of the evidence in this penalty phase, carefully consider
18 that evidence and the evidence presented in the guilt phase,
19 and discuss all the evidence with your fellow jurors.

20 Remember, whether or not the circumstances in this
21 case justify a death sentence or a sentence of life in prison
22 without the possibility of parole on either of the counts in
23 question is entirely yours.

24 You must not take anything I've said or done during
25 the guilt phase of the trial or anything I may say or do

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6242

1 during the penalty phase of the trial as indicating what I
2 think of the evidence or what I think the sentence on any of
3 the counts in question should be. You must still follow all
4 of my prior instructions about how you must conduct yourself

5 during this trial.

6 Therefore, among other things, I previously told you,
7 don't talk to anyone about this case or let anyone talk to you
8 about it until after you have completed your penalty phase
9 deliberations.

10 Your decision about what sentence to impose must be
11 based exclusively on the evidence presented in court during
12 the guilt phase and the penalty phase and not on anything
13 else.

14 Those are the preliminary instructions leading up to
15 the penalty selection stage of the penalty phase of the case.
16 I gave you those -- I give you these instructions so that you
17 understand the process that you are necessarily going to
18 engage in, in making your fact findings and in reaching your
19 ultimate conclusion as to the sentence to impose.

20 I now leave it to counsel to give you brief opening
21 statements.

22 Thank you, for your attention.

23 Mr. Minish.

24 MR. MINISH: Your Honor, counsel, members of the
25 jury, good morning.

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6243

1 You've now reached the final stage of the trial. As
2 the Judge told you, today and through the balance of the trial
3 there's going to be testimony about additional aggravating
4 factors that the Government seeks to present to you that will
5 support a finding that the death penalty is appropriate. The
6 Judge told you what they are. They are obstruction of

7 justice, future dangerousness and victim impact.

8 It's our understanding that defense counsel is going
9 to provide a number of mitigating factors to you.

10 Now, I will leave to Mr. Frazer to argue the value of
11 those mitigating factors should they be submitted to you, but
12 do keep in mind during the course of this process what the
13 Judge told you; that ultimately this is not a math equation of
14 count up the number of aggravating factors, count up the
15 number of mitigating factors and make a decision based on
16 which there's more of.

17 What you really have to do is look a little further
18 into them and find, as the Judge said, the value of these
19 factors when you are weighing them. Does one actually have
20 some impact? Do others not have impact?

21 When you're doing that process and during the course
22 of this selection phase, remember that it's the law and your
23 obligation to follow the law, not sympathy or bias or
24 prejudice or anything along those lines that controls your
25 decision.

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6244

1 Now, number one, the obstruction of justice. What
2 the defendant did was not just have Kemo DeShawn McCray
3 killed. What he did was actually attack the criminal justice
4 system, because as you probably knew before you got here, but
5 certainly know now, that without witnesses, this system just
6 could not work.

7 What the defendant did was attempt to rig the system,
8 was to take away the evidence that a jury could hear about

9 him, a jury sitting for the drug case would be unable to hear
10 from Kemo McCray. Just in case the thought is going through
11 your mind, well, ultimately it wasn't obstructed because the
12 jury did hear, keep in mind, members of the jury, that the
13 fact that he failed is not something that should be rewarded.
14 Obstruction of justice is what defendant was going after,
15 plain and simple.

16 The evidence from the guilt phase and the little
17 evidence you heard yesterday make that very clear, as will
18 additional evidence that you hear today.

19 Now, for the future dangerousness factor, again, this
20 is specifically to the defendant and what danger he poses in
21 the future. It's a very plain, simple statute. The idea,
22 though, keep in mind is that the context for his future
23 dangerousness has to be kept in mind that it will be from the
24 jail cell.

25 The Government is not alleging, nor would it be

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6245

1 proper, for us to allege that somehow or another the defendant
2 is going to be on the street causing problems. Now, for I
3 suppose many, many defendants, incarcerated individuals, that
4 would pose a great deterrent to their ability to be a danger
5 in the future, but as the defendant has demonstrated very
6 clearly, the jail cell is in no way, shape or form something
7 that precludes him from committing crimes.

8 The fact that he will be in jail for the rest of his
9 life does not prevent him from being a danger in the future.

10 Along those lines, beside the fact what you already
Page 21

11 know the defendant is able to do from a jail cell, we will
12 present to you the defendant's criminal history. I know
13 you've heard random snippets. Yesterday you heard about a
14 robbery or a crime with a gun, I'm sorry. It was a robbery, a
15 shooting. You will -- you heard about two drug charges
16 previously, but you'll hear now about from beginning to end.

17 And the reason that's presented to you is really just
18 to show sort of a pattern, that you can draw a conclusion from
19 the way the defendant has acted in society, from his early
20 teen years through today, that he has no regard for breaking
21 the law, or is not concerned, that's a better way of saying
22 it, not concerned with breaking the law and that is something
23 you can consider when determining whether or not the defendant
24 poses a danger in the future.

25 Finally, the victim impact evidence. What you're

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6246

1 going to hear is evidence from the defendant -- excuse me,
2 from Kemo DeShawn McCray's family. You're going to hear about
3 the impact that the loss that the defendant caused, Kemo being
4 removed from these peoples' lives by the murder, the impact
5 that it has and how their lives have been affected and how his
6 children's lives have been affected.

7 It's also important, members of the jury, because
8 during the course of this trial, you've heard the name Kemo
9 DeShawn McCray, Kemo McCray, Kemo. You've heard a name,
10 you've seen a picture, you heard him referred to as CI, CW,
11 informant, but what you'll see today is that Kemo DeShawn
12 McCray was a real person, not just those names, not just those

13 pictures, with a real life and real impact on the people in
14 his life.

15 Ultimately, members of the jury, the idea, as the
16 Judge told you, is you're going to weigh these factors out;
17 that you'll do so with the law and only the law as your
18 guidance. While you're doing that and during the course of
19 the testimony and the evidence you hear, there's a couple of
20 things I want you to remember.

21 One, the reason why we're here. The reason why we're
22 here, very simply, is the decision of the defendant. It was
23 his free will. He made a decision to have Kemo killed. He
24 could have taken responsibility for his criminal charges, the
25 drug charges, but he made a choice, a cold, calculated choice

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6247

1 that a shot at freedom in getting out of jail for him was
2 worth the murder of Kemo.

3 At the end of the case, members of the jury, the
4 Government is going to ask you to impose the sentence that
5 will make the defendant pay for that decision, pay the price
6 for his decision to have Kemo killed, a decision that at the
7 beginning of the case when we were doing jury selection,
8 everyone sitting here told us if the evidence supports it, I
9 will be able to make the decision; that if justice demands it,
10 I will be able to make the decision.

11 At the end of the case, members of the jury, the
12 Government is going to ask you to live up to that promise
13 because what evidence supports and what justice demands is
14 that the defendant be sentenced to death.

15 Thank you.

16 THE COURT: All right.

17 Mr. Kayser.

18 MR. KAYSER: Thank you, Judge.

19 Mr. Baskerville, Mr. Herman, members of the
20 prosecution team, members of the jury, unfortunately, the cold
21 sore throat or whatever that has been bouncing around this
22 case for months now has come my way and I'm going to do the
23 best I can to work through it.

24 You can all recall in jury selection process those
25 questions that we asked about your attitudes about the death

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6248

1 penalty. At times there were answers that came from you which
2 assumed that there was some defense which was not part of this
3 case, a defense like self-defense, a defense like provocation
4 of some sort.

5 In some instances I or Mr. Herman or the Court itself
6 pointed out that if you got to this stage, you would have
7 already found Mr. Baskerville guilty of an intentional murder.
8 I remember asking at least some of you that question and I
9 know Mr. Herman asked you and I believe the Judge as well
10 asked you and stated those facts; that no justification
11 defense would be relevant.

12 Those were not comfortable questions for us to ask at
13 the time, obviously, because Mr. Baskerville at that time was
14 presumed to be innocent. We had to ask those questions
15 because we knew that we might get to this stage and we hoped
16 that we wouldn't, but we're here, we did get to this stage.

Page 24

17 We're disappointed, no question about that. Perhaps
18 not so surprised. We accept your verdicts, we respect your
19 verdicts, we have to live with them and we have to move on.

20 We address you now with respect to the most serious
21 question in this case, which is the sentence that you will
22 recommend imposition of and actually not recommend but
23 whatever sentence you select is going to be the sentence
24 that's imposed by the Court.

25 Death by lethal injection or life without the

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6249

1 possibility of release, both of those sentences I think
2 everyone would agree are harsh sentences, very harsh
3 sentences. It's the finality of death, however, that I guess
4 gives us all pause and which makes it the most severe
5 punishment that we can impose in our system of justice.

6 Obviously, we're going to be asking you to spare the
7 life of Will Baskerville. The Government asks for justice, we
8 ask for justice also, justice tempered with mercy. The
9 decision is yours and it's yours alone. Ultimately the
10 decision can rest with just one, any one of you who
11 deliberates on this jury. That is all it takes, one juror who
12 decides that death is not the appropriate sentence can have
13 that effect.

14 Each one of you is going to make a unique,
15 individual, personal judgment for life or for death. Each one
16 of you makes that decision yourself, in your own heart as to
17 whether the death penalty is the only appropriate sentence to
18 make. The decision is final, it's not going to be changed by

19 the Judge.

20 You may respectfully agree to disagree. You're not
21 required to be unanimous. The Judge talked about unanimity
22 and the difference in the concept of unanimity at this stage
23 and at the prior stage. You are to deliberate obviously, talk
24 about your feelings, your judgments about what should be done
25 with each other and try to come to a unanimous verdict, if you

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N.J.

6250

1 can, but if you're not unanimous, it's still a verdict. It's
2 just a verdict for a life sentence without the possibility of
3 release instead of death.

4 Remember that a life sentence without the possibility
5 of release is not in one of these county jails that we've
6 heard so much about, where sometimes things perhaps are a
7 little bit lacks. It's in a federal penitentiary, a maximum
8 security federal penitentiary.

9 At this stage, your function is different than in the
10 guilt phase. In the guilt phase, your function was to
11 determine whether or not the Government has proven each and
12 every element of the offense beyond a reasonable doubt. At
13 the first stage of the penalty phase, which we completed
14 yesterday, your function was to determine whether the
15 Government had proven that gateway factor beyond a reasonable
16 doubt, and at least one statutory aggravating figure --
17 factor.

18 Now, at this stage of the penalty phase, you'll be
19 determining whether or not aggravating factors exist and you
20 have to make that determination, as the Judge explained,

21 beyond a reasonable doubt. You have to determine whether or
22 not mitigating factors exist. You determine that by a lesser
23 standard of evidence, by a preponderance of the evidence or
24 the greater weight of the evidence is the way the Judge
25 explained.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6251

1 You're not going to just be finding whether
2 aggravating factors or mitigating factors exist, you're going
3 to be weighing them, assigning weights to them and balancing
4 them, determining how much weight to give each, whether or not
5 to give any weight at all to some of them or any weight to any
6 of the factors that you determine and to balance them in
7 making your findings.

8 You're done with the gateway factor, that doesn't get
9 found. It was if it exists, you go forward; if it doesn't
10 exist, you don't go forward. It's no longer part of the
11 process at this stage.

12 The weighing and the balancing process, again, is
13 totally individual. You each have to do this yourself, in
14 your own mind, in your own heart. Congress hasn't said how
15 much weight to attach to any particular particular factor that
16 you may find. You have to decide those things personally.
17 It's a community of decision.

18 Congress hasn't limited the mitigating factors. You
19 can come up with your own, the Judge explained. You don't
20 have to accept the ones we provided if you don't want. You
21 can make one up yourself, put it to a vote, see how many
22 jurors agree with it or don't agree with it and even if only

23 one juror finds that a mitigating factor exists, whether or
24 not other jurors agree with that, whether or not we have
25 suggested it, you can come up with it yourself, it can be used

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6252

1 by you in this weighing and balancing process.

2 Even if no other juror agrees with you, even if you
3 and any one juror find a mitigating factor which you are
4 satisfied tips the balance to life instead of death, that's an
5 appropriate sentence.

6 Mitigation is not an excuse for a terrible crime.
7 It's not justification. You can't justify the death of a
8 human being. Mitigation doesn't explain, it doesn't blame,
9 it's a reason not to impose a sentence of death. It's about
10 the determination of proper punishment in this case.

11 It's a system, I guess, of guided discretion in which
12 you're free to make up mitigating factors on your own. You're
13 not free to make up aggravating factors on your own. The
14 presumption is for a life sentence. If there is no
15 aggravating factor found, then the appropriate penalty is life
16 without the possibility of release.

17 The death penalty can never be automatic. If someone
18 killed five people, ten people, a building full of people,
19 it's not automatic. You have to go through this process.
20 There may be a lot of weight if there were that many deaths
21 caused assigned to an aggravating factor, it's still not
22 automatic. It's a function of each juror making up their own
23 mind with respect to those factors.

24 For example, in this case, one of the factors that's
Page 28

25 going to be presented under future dangerousness is a robbery

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6253

1 which took place 20 years ago, when Mr. Baskerville was a
2 juvenile. It happened in 1986, sentenced in 1987, so he was,
3 I think at the time that it occurred, 17 years old, waived up
4 as an adult. How much weight do you attach to something that
5 happened 20 years ago when Mr. Baskerville was 17 years old?

6 How much weight do you attach to the planning done by
7 those who we know participated in the conspiracy to kill Kemo
8 DeShawn McCray? They were on the street, they were able to
9 make a lot of detailed plans and so forth. Obviously, they
10 did so, based on the testimony of the witnesses and based on
11 what happened. How much weight do you assign that with
12 respect to Mr. Baskerville's conduct here?

13 Now, the function of an opening is not to argue, it's
14 to layout what we expect to set forth for you. We're going
15 to be presenting evidence and witnesses to show that William
16 Baskerville is not a future danger when locked in prison.
17 That's the issue. It's not whether he's a future danger if
18 he's out on the street because he's not going to get out on
19 the streets. No matter what, at the very least, Mr.
20 Baskerville is going to spend the rest of his life in a
21 federal, maximum security federal penitentiary.

22 He's going to die in jail. The only question is
23 whether he dies from natural causes, whenever they may occur,
24 however they may occur, or whether you make the determination
25 that he should be strapped to a gurney and his veins filled

1 with poison.

2 MR. FRAZER: Objection, Judge.

3 THE COURT: Sustained.

4 Disregard that comment, ladies and gentlemen.

5 Go ahead.

6 MR. KAYSER: Thank you.

7 That decision is up to you and you alone. We'll be
8 presenting some brief testimony, some family members, his
9 children, one of his brothers, relatives of Will Baskerville
10 who will speak to some of the mitigating circumstances that
11 the Judge has spoken about. You're going to see a videotape
12 of Mr. Baskerville's youngest child, seven years old. We felt
13 it more appropriate to have a videotape made of her rather
14 than bring her into this courtroom to get on that witness
15 stand and testify because of her age.

16 You're going to learn a little bit about how it was
17 for Will Baskerville growing up, the unfortunate influences in
18 his life and certainly he made a lot of bad choices in his
19 life and we're not backing off of that. It's obvious.

20 I think you'll see through the testimony of his
21 younger brother, Tariq, how much influence the environment has
22 in making some of those choices. Tariq, you'll learn, was
23 fortunate enough to have a good mentor, to be separated from
24 the family for a period of time, to get involved with the
25 church and you'll find that he's been able to lead a

1 responsible life, never been arrested and yet he grew up for a
2 significant period of time in the same household. The
3 differences are pretty dramatic.

4 Judge Pisano has read the mitigating factors that we
5 thought of. They're not final. I'm not going to address all
6 of them now. You're not limited to those factors.

7 One we did not list, for example, but which you might
8 agree should be added, is that Will Baskerville was ill served
9 by his original attorney in this case, who you've heard so
10 much about, Paul Bergrin, a person who, by his education, by
11 his training, by the ethical and moral standards he's supposed
12 to have, by the oath he took as an attorney, should have been
13 directing Will Baskerville down a different path than he did.
14 He owed a duty of loyalty to Will Baskerville. Instead, his
15 loyalties were to others and to himself.

16 A key mitigating factor for all of you to consider is
17 that Anthony Young, the person who testified in this case, a
18 person who was out on the street, actually participated in the
19 killing of Kemo McCray, actually put the bullets into him that
20 resulted in his death, will never face the death penalty,
21 ever. He may not even face a true life sentence. That's
22 going to be up to this Court ultimately.

23 Regardless of any aggravating factors which may exist
24 and any other mitigating factors which may exist, doesn't that
25 mitigating factor alone weigh heavily and suggest that Mr.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

1 Baskerville should not face a greater penalty than Anthony
2 Young? That's for you to decide.

3 We've heard the testimony about Bergrin, about Jamal
4 McNeil, Jamal Baskerville, Rakeem Baskerville, Hakim Curry.
5 At this point none of those people have been charged with this
6 murder. I can't say for sure whether they some day will be or
7 not. I don't think you should be speculating about it, but at
8 this point they're not facing the punishment that Mr.
9 Baskerville is facing.

10 You have to ask the question, is that fair and just
11 to impose the death penalty on Mr. Baskerville under those
12 circumstances?

13 The choice is yours. We submit the evidence gives
14 and will give you sufficient and good reasons to choose a life
15 sentence over a death sentence.

16 We thank you.

17 THE COURT: All right.

18 Thank you, Mr. Kayser.

19 MR. MINISH: At this time the Government calls John
20 Gay to the stand.

21 THE COURT: All right.

22 J O H N G A Y, sworn.

23 THE CLERK: State your full name and spell it for
24 the record.

25 THE WITNESS: John Gay, G-a-y.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6257

1 DIRECT EXAMINATION BY MR. MINISH:

2 Q Good morning, Mr. Gay.

3 A Good morning, Mr. Minish.

4 Q By whom are you employed?

5 A United States Attorney's Office for the District of New
6 Jersey.

7 Q How long have you been so employed?

8 A Over three and a half years.

9 Q What's your current position with the U.S. Attorney's
10 Office?

11 A I am the chief of the drug unit, called the OCF unit.

12 THE COURT: Mr. Gay, pull the microphone up.

13 THE WITNESS: Sorry, your Honor.

14 Q In that supervisory position, you're, in fact, both my
15 supervisor and Mr. Frazer's supervisor?

16 A Yes.

17 Q Prior to getting to the U.S. Attorney's Office, did you
18 have any prosecution experience?

19 A Yeah. I was a prosecutor for 13 years with the Manhattan
20 DA's Office, before joining the United States Attorney's
21 Office.

22 Q And what position did you hold at that office prior to
23 leaving?

24 A I was the chief of the drug unit, a specialized drug unit
25 in the Manhattan DA's Office.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6258

1 Q I'm going to direct your attention to January of 2003.

2 Were you involved in an investigation into the drug
3 activities of William Baskerville?

4 A Yes, I was.

5 Q Could you briefly explain to the jury what was involved
6 in that investigation?

7 A We had information from an individual named Kemo DeShawn
8 McCray that William Baskerville was a supplier of crack
9 cocaine in the Newark area. We then set about to try to
10 gather evidence against Mr. Baskerville to prove that he was,
11 in fact, a drug dealer.

12 Mr. McCray felt that he would be able to make
13 undercover purchases from Mr. Baskerville, so a plan was
14 developed by the F.B.I. to do that.

15 We then basically set about to try to get corroborating
16 evidence of Mr. McCray. So, for example, one of the things
17 that we used was that the F.B.I. tape recorded any
18 conversations that they could between Mr. McCray and Mr.
19 Baskerville, telephone conversations. There were also any
20 face-to-face meetings between Mr. McCray and Mr. Baskerville
21 they also tried to tape record.

22 There were a number of other things like that, some
23 videotape was used, too, but primarily the case was centered
24 around Mr. McCray making purchases of crack from Mr.
25 Baskerville and the F.B.I. using various methods to try to

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6259

1 corroborate Mr. McCray.

2 Q When that investigation was ultimately wrapped up, did
3 you seek a complaint in federal court?

4 A Yes, we did.

5 We sought a complaint before a magistrate judge and
6 also an arrest warrant for Mr. Baskerville for a charge of

7 distribution of crack cocaine.

8 Q And based on that arrest warrant, was the defendant, in
9 fact, arrested?

10 A Yes, he was. I believe it was November 25th of 2003 he
11 was arrested by the F.B.I.

12 Q And then ultimately after that, was the investigation
13 presented to a Grand Jury?

14 A That's correct.

15 We presented evidence to the Grand Jury and the Grand
16 Jury issued an indictment for, if I'm remembering correctly,
17 one count of conspiracy to distribute over 50 grams of crack
18 and six substantive counts of distribution of over five grams
19 of crack cocaine.

20 Q And was a post-indictment, after the indictment was
21 handed down, was a trial date set?

22 A Yes, there was a trial date set. I believe the initial
23 trial date was for sometime in February of 2004.

24 Q And ultimately, was that trial date adjourned?

25 A Yes, it was.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6260

1 At the request of the defense attorney and also with
2 the consent of the Government, the case was adjourned for, I
3 don't recall exactly how long the adjournment was, but it was
4 adjourned at that time.

5 Q Now, what was your position going into the case at that
6 time?

7 A I was the lead prosecutor on the case.

8 Q And as lead prosecutor, would you be the person who would

9 make decisions with respect to evidence that you presented at
10 trial?

11 A Yes.

12 Q Explain to the jury what, at the time prior to Mr. McCray
13 being killed, how you intend to present the evidence
14 generally?

15 A The primary witness in the case was going to be Kemo
16 DeShawn McCray, since he was the person that was the eye
17 witness to all of the events.

18 We would also, obviously, introduce the corroborating
19 evidence of Mr. McCray, which included the tape-recorded
20 conversations, both on the telephone and during the buys
21 themselves.

22 We would also introduce the videotape surveillance by
23 the F.B.I., we would also introduce the drugs themselves and
24 the laboratory tests for the drugs, as well as physical
25 surveillance by the F.B.I. agents out there during the buys.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6261

1 That would be primarily the way the evidence would have been
2 presented.

3 Q On March 2, 2004, Kemo DeShawn McCray was murdered.

4 How did that affect your case?

5 A Well, I guess the most obvious way is that our primary
6 witness was now not somebody that we could call to the stand
7 to testify because he was dead.

8 We then basically -- the way the investigation was
9 built was around Kemo DeShawn McCray, all the other evidence
10 was gathered to corroborate what his testimony was going to be

11 at trial.

12 Since Mr. McCray was no longer available to testify, we
13 were left with the corroborating evidence, but not the main
14 witness. There were significant things. For example, some of
15 the buys that took place, although there was audio recordings
16 of them and physical surveillance generally, Mr. McCray was
17 the only person that actually was an eye witness to the
18 hand-to-hand transactions in Mr. Baskerville's vehicle, so we
19 were -- it had an enormous impact on our ability to prove this
20 case, the drug portion of the case.

21 Q Now, with respect to the drug portion of the case, what,
22 if anything, did you or the U.S. Attorney's Office do in an
23 attempt to be allowed to use that evidence?

24 A Well, there were a couple of issues. The first was that
25 the tape recordings themselves, in order to introduce them

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6262

1 into evidence, they would have to be authenticated. The
2 normal way would be a participant in the conversation would
3 testify and say, I had this conversation, I listened to the
4 tape recording, it is an accurate recording of it and,
5 therefore, the tapes would come in.

6 Since we were not in a position to do that, since Mr.
7 McCray was dead, we had to come up with alternate methods for
8 doing that. Thankfully the F.B.I., when they did the
9 investigation, rather than simply use a recording device
10 alone, they used a recording and transmitting device, so
11 Special Agent Manson actually heard the conversations as they
12 were taking place and that allowed us another method to get

13 the tapes into evidence. That was the first hurdle we had to
14 cross.

15 Again, without that, if we could not cross the hurdle,
16 the tapes would not come into evidence and since McCray was
17 dead, we would not have his testimony either, it would have
18 had enormous impact on our ability to prove the case.

19 In addition, there was a second potential problem which
20 is even if we were able to get the tapes in, to authenticate
21 the tapes, there was still hearsay problems with getting in
22 the actual content of the tape. There was -- there's a rule
23 of evidence, 804(6)(b) that allows -- allowed us an avenue to
24 possibly get the hearsay into evidence.

25 The problem was we would have to prove that the

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6263

1 defendant was the person who caused the unavailability of the
2 witness. The rule basically is if the Government can prove
3 that the defendant caused the unavailability of the witness,
4 then we can present testimony -- we can present the tapes and
5 other prior statements of the witness. I'm not sure if I'm
6 explaining that properly, but.

7 Q Ultimately, the defendant -- the motion was made to
8 prevent the defendant from profiting from his bad act?

9 A Correct.

10 Now, so the first stage was that we had to then set
11 about investigating the murder for two reasons. Obviously,
12 first, is we wanted to see that the person who was responsible
13 was brought to justice.

14 The second thing was that in order to get the tapes and

15 the other prior testimony of or prior statements of Kemo
16 DeShawn McCray into evidence, we would have to be able to show
17 that Mr. Baskerville was the person who caused the
18 unavailability of Mr. McCray.

19 Q And was that ultimately presented to the Court?

20 A It was ultimately presented to the Court, yes.

21 Q And was the Government's motion granted?

22 A The Government's motion was granted, that is correct.

23 Q And then, therefore, we were able to present the evidence
24 that this jury heard?

25 A Yes.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6264

1 Q Mr. Gay, why is it that you went from the lead prosecutor
2 in this case to not being involved directly with the trial?

3 A Well, I was promoted. While I was still handling this
4 case, I was promoted to be the chief of the unit. When I was
5 initially handling the case, I was a line assistant.

6 I was promoted partway through the case to be a
7 supervisor of the drug unit and my primary responsibilities
8 then became supervising the unit, not handling cases.

9 The prospect -- in the office I work in is actually in
10 Newark. The prospect of spending over three months on trial
11 not being able to supervise my unit was something that my
12 bosses felt they needed me to supervise the unit and I had
13 some very experienced attorneys in my unit that could take
14 over this case and that's what happened.

15 MR. MINISH: I have nothing further, Judge.

16 THE COURT: Any cross-examination?

17 MR. HERMAN: Thanks.
18 CROSS-EXAMINATION BY MR. HERMAN:
19 Q Good morning, Mr. Gay.
20 A Good morning, Mr. Herman.
21 How are you?
22 Q I'm fine.
23 You?
24 A Fine, thanks.
25 Q Congratulations on your promotion.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6265

1 A Thank you.
2 Q We know each other, right?
3 A Of course, we do.
4 Q I wasn't the first lawyer for Mr. Baskerville, right?
5 A No.
6 Q Who was that?
7 A That would have been Mr. Paul Bergrin was the first
8 lawyer.
9 Q Right.
10 And you had some conversations with Mr. Bergrin when he
11 was Mr. Baskerville's lawyer, right?
12 A Yes, I did.
13 Q And at some point you brought a motion in front of the
14 Judge to remove Mr. Bergrin from the case. Is that right?
15 A That is correct.
16 Q And what was the basis of that motion?
17 A The basis of the motion was a conflict of interest. We
18 believed that Mr. Bergrin had either some involvement in the

19 murder or at the very least was a witness to his own client's
20 criminal activity.

21 It was the Government's position that he could not be
22 both the lawyer and a witness/participant in the crime.

23 We made a motion before the Court indicating that,
24 which was ultimately granted.

25 Q So ultimately Mr. Berggrin was not permitted to represent

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6266

1 Mr. Baskerville. Is that right?

2 A Well, if I'm not mistaken, I believe that it may have
3 been a combination of the choice of Mr. Baskerville and -- I
4 don't recall whether it was the choice of Mr. Baskerville
5 ultimately or but he ultimately was not permitted to represent
6 Mr. Baskerville, that is correct.

7 Q That's when I was appointed and Mr. Kayser was appointed?

8 A Correct, yes.

9 Q And that was maybe December of 2004?

10 A I believe it might have actually been 2000 -- yeah, I
11 think it was 2004, correct. Yes.

12 Q Okay.

13 And now, you said that you believed that Mr. Berggrin
14 might have had some participation in crimes. Is that correct?

15 A Yes.

16 Q And what was the basis of your belief?

17 A Well, we had some intercepted conversations over a
18 wiretap in which Mr. Berggrin, in essence, said, I just spoke
19 to Will. He told me -- he was speaking to another individual,
20 Hakim Curry.

21 The conversation he said, I just spoke to Will. The
22 name of the informant is. He pronounced it K-Mo rather than
23 Kemo. That he passed this information on to Hakim Curry.

24 That was the general gist of the motion.

25 Q Of the motion?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6267

1 A Correct.

2 Q But you also -- at some point, did you have Anthony
3 Young, was he a witness in the case at that time?

4 A At that time, I don't believe Mr. Young was a witness at
5 that time. I think Mr. Young came later, if I'm remembering
6 correctly.

7 Q Okay.

8 Were you still in the case when Mr. Young emerged as a
9 witness in this case?

10 A Yes, I was.

11 Q And did Mr. Young tell you that Paul Bergrin had had a
12 meeting with other individuals in which he said something like
13 no Kemo, no case, right?

14 A Yes, he did tell me that.

15 Q And did that appear to be some criminal involvement in
16 the murder?

17 A Yes, absolutely.

18 Q So do you believe, based on what you know about this
19 case, that Paul Bergrin had criminal involvement in the murder
20 of Kemo?

21 A Yes.

22 Q And it turns out that the phrase, if it was said, no

23 Kemo, no case, that as you've explained, that didn't actually
24 turn out to be true, right?

25 A I'm not sure I understand the question, Mr. Herman.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6268

1 Q Well, the jury has convicted Mr. Baskerville of the drug
2 charges, right?

3 A Yes.

4 Q All right.

5 And, obviously, Kemo was not available to testify at
6 the trial, right?

7 A That is correct.

8 Q Did you follow the trial as the supervisor at all?

9 A Yes, I did. I wasn't present during anything but the
10 opening statement, but I was in contact with the assistants
11 practically on a daily basis, yes.

12 Q So you may be aware that during the course of the trial
13 Mr. Minish and Mr. Frazer introduced drugs, actual drugs,
14 crack cocaine?

15 A Yes.

16 Q And they played about 30 audio tapes that have been
17 obtained by the F.B.I.?

18 A Yes.

19 Q And they played a number of videotapes of surveillance of
20 Mr. Baskerville?

21 A Yes, I'm aware of that as well.

22 Q And Agent Manson was on the stand two or three days
23 describing exactly what she saw for every one of those
24 transactions?

25 A Correct.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6269

1 Q Right.

2 So that was the evidence that, as far as you know, was
3 presented to the jury, which ultimately resulted in the jury
4 finding Mr. Baskerville guilty. Is that right?

5 A Yes.

6 Q Part of the evidence?

7 A Well, yes. I know that evidence was presented.

8 I guess I can't -- it would be speculation as to
9 whether they relied on that to find him guilty, I don't know.
10 But I know that was what was presented and they ultimately
11 found him guilty.

12 Q Okay.

13 Now, you're now a supervisor in the U.S. Attorney's
14 Office?

15 A Yes.

16 Q And who's your immediate supervisor?

17 A My immediate supervisor is Nancy Hoppock, the deputy
18 chief. Above her is Amy Winkelman, who is the chief of the
19 criminal division.

20 Q Who is the head of the whole U.S. Attorney's Office

21 A Christopher Christie.

22 Q Okay.

23 How many assistants work for the U.S. Attorney's
24 Office?

25 A I'd have to guess. I think it's somewhere around 120 to

6270

1 130.

2 Q Okay.

3 So these are 120 or 130 federal prosecutors in the
4 State of New Jersey. Is that right?

5 A Correct.

6 Q And some are in Newark, right?

7 A Yes.

8 Q Some are right here in Trenton, right?

9 A Yes.

10 Q And you have an office in Camden as well. Is that right?

11 A Correct.

12 Q And your office is in charge of prosecuting federal
13 crimes, right?

14 A That's correct.

15 Q Which could be drug dealing, right?

16 A Yes, that's a federal crime.

17 Q Okay.

18 And weapons possession?

19 A Also a federal crime, yes.

20 Q Politicians or crooked politicians and politicians who
21 are on the take. Is that right?

22 A That's not my area of expertise, but we do that type of
23 prosecution as well, yes.

24 Q Fraud cases. Is that right?

25 A Yes.

6271

1 Q Income tax fraud, any kind of fraud involving federal
2 institutions or federal documents. Is that right?

3 A That would be correct.

4 Q Okay.

5 Inner city drug gangs?

6 A Yes, we target them as well under the right
7 circumstances, yes.

8 Q Okay.

9 And organized crime?

10 A Also, yes.

11 Q That's all within the jurisdiction of your office?

12 A Under the right circumstances, yes.

13 Q When you say "the right circumstances," what do you mean,
14 if you can explain?

15 A On each crime, it depends. We have to establish that we
16 have federal jurisdiction to prosecute a crime. For some
17 crimes we have it, sometimes we don't. But there is a hurdle
18 we have to cross, that it has to be something we can prosecute
19 federally.

20 There are a number of crimes we can do that, but the
21 reason why I'm not giving a blanket statement is there are
22 some occasions when we may not be able to prosecute a crime
23 because we don't have federal jurisdiction over it.

24 Q Okay.

25 Federal jurisdiction would mean crossing a state line,

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N.J.

6272

1 that's one way?

2 A That's certainly one way, yes.

3 Q So if it was drugs going from out of state into New
4 Jersey or out of New Jersey, that could give you jurisdiction
5 over a case?

6 A That's true.

7 Generally drug crimes we have jurisdiction over, even
8 if I can't prove necessarily that they've travelled in
9 interstate commerce, but yes.

10 Q Does your office have a fair amount of discretion in
11 terms of what cases they prosecute?

12 A I don't know -- there is discretion, yes.

13 Q I mean, you're not really like the local police
14 department where someone makes a complaint and then they have
15 to follow-up on it, right?

16 A Well, it depends.

17 On some crimes, we are the only ones with jurisdiction,
18 then we would follow-up on it. If I understand your point,
19 Mr. Herman, it's true, there are certain crimes that if we
20 don't prosecute them, the local prosecutor could also
21 prosecute them and in that instance, there is some give and
22 take as to whether we would take a case or not.

23 Q All right.

24 A But there are some cases that that's not the
25 circumstance.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6273

1 Q Okay.

2 But in the case of let's say the murder case here, the
3 murder of Mr. McCray?

4 A Yes.

5 Q That was originally being prosecuted or investigated by
6 the Essex County Prosecutor's Office. Is that right?

7 A They were certainly involved in it, yes.

8 Q Okay.

9 And then at some point the federal Government got more
10 involved in the case, right?

11 A Well, I mean, what I would say, Mr. Herman, is that from
12 the beginning, since Mr. McCray was a federal witness, there
13 was a federal presence in this investigation from the
14 beginning. There was also a local presence, which included
15 the Newark P.D. and the Essex County prosecutor, but I don't
16 think it would be accurate to say that at some point we
17 stepped in. We were in from early on, although I wouldn't say
18 that the federal Government had control of every single aspect
19 of the case.

20 Q All right.

21 So that could have been characterized as a joint
22 investigation, at least at the beginning?

23 A Yeah, I guess that would probably be accurate.

24 Q And in terms of charging decisions --

25 A Yes.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6274

1 Q -- as to who would be charged, who makes that decision
2 within the U.S. Attorney's Office?

3 A Well, it depends on the type of case it is.

4 If you're talking about this one specifically, I can go
5 through that or I can give you the general way it works.

6 Q Well, tell us, this case specifically, who has made
7 decisions as to who would be charged in the murder of Kemo
8 McCray?

9 A The decisions were made by, obviously, line assistant had
10 input in consultation with the supervisor, which at the time
11 when we initially charged this case was me, with consultation
12 with those above me, including Nancy Hoppock, Amy Winkelman
13 and also individuals in the executive as well, including Mr.
14 Christie. That would be for charging him.

15 As far as in this case, since it's a death penalty
16 eligible case, there is an entire other level of review as
17 well which I can discuss if you would like, Mr. Herman.

18 Q No, I'm actually just talking about the charging process.

19 A Okay.

20 Q Let me ask you this, Mr. Gay: When Mr. Baskerville was
21 first charged with the drug charges, how was that done? How
22 was that accomplished?

23 A Well, initially we charged him with a complaint. He was
24 arrested on the complaint and then within probably a week or
25 so, we presented the evidence to the Grand Jury and the Grand

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6275

1 Jury issued an indictment.

2 Q So initially you can charge and arrest somebody based on
3 a complaint. Is that right?

4 A That is correct.

5 Q How is it obtained in this case?

6 A Well, it was obtained -- basically, the complaint is we
7 set forth facts, we give -- the complaint has the actual legal

8 charge, the statute that we're saying the defendant violated
9 and then a factual basis, paragraphs, written paragraphs about
10 facts supporting why we believe he committed the charges.

11 We then present that to a magistrate judge. The agent,
12 an agent swears to it and signs it and if the judge finds that
13 there is probable cause to believe that the defendant
14 committed the crime, then the magistrate judge signs off and
15 issues an arrest warrant as well.

16 Q All right.

17 So that doesn't involve any Grand Jury proceeding. Is
18 that right?

19 A No, not at that time.

20 Q All right.

21 So according to your procedures, if you believe there's
22 probable cause to arrest someone and a magistrate judge agrees
23 with that, the F.B.I. can go out and arrest somebody. Is that
24 right?

25 A That is correct.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6276

1 Q And then they're brought in front of a judge. Is that
2 right?

3 A That's correct.

4 Q And at some point the case is presented to a Grand Jury.
5 Is that correct?

6 A Yes.

7 Q All right.

8 Now, you've told us that based on your involvement with
9 the case, which is not currently in charge of the case, but

10 you've had involvement, that you believe that Paul Bergrin was
11 involved with a conspiracy to murder. Is that correct?

12 A Yes.

13 Q And do you also believe that Hakim Curry was involved
14 with a conspiracy to murder?

15 A Yes, there was evidence to that, to support that, yes.

16 Q That he paid \$7,500 to Anthony Young to shoot and kill
17 Kemo McCray. Is that right?

18 A That was what Mr. Young told me and I believe that's also
19 what he testified to, yes.

20 Q And that Rakeem Baskerville was also involved in a
21 conspiracy to murder Mr. McCray. Is that right?

22 A Yes, according to Mr. Young's -- what Mr. Young told me,
23 Rakeem Baskerville was the driver of the get-away car and also
24 paid him, I believe, \$7500 as well.

25 Q All right.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6277

1 So based on what you know about this case, Paul
2 Bergrin, Rakeem Baskerville, Hakim Curry had involvement in
3 this, not only conspiracy murder, but the actual murder?

4 A That's correct.

5 Q And are you aware of any involvement by a man named Jamal
6 McNeil?

7 A Yes, I am aware based on what Mr. Young told us, I
8 believe Mr. McNeil was somebody who was acting as a look-out
9 during the murder.

10 Q And under the law, would he have complicity in the
11 conspiracy to murder Mr. McCray?

12 A Well, I mean, yes, the short answer is yes.

13 Whether or not it could be proven beyond a reasonable
14 doubt, I can't say, but.

15 Q Well, would it be fair to say that you have probable
16 cause, you could go to a magistrate judge and ask a magistrate
17 judge to arrest Jamal McNeil based on the information that you
18 have?

19 A Yes, that's correct, but that's not necessarily the
20 standard that we follow as prosecutors for when we seek an
21 arrest warrant. That is the legal minimum that is required is
22 probable cause.

23 However, when we make charging decisions in cases, we
24 don't charge an individual unless we feel we can prove the
25 case beyond a reasonable doubt at trial.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N.J.

6278

1 Q And you're aware of Anthony Young's testimony in this
2 case. Is that correct?

3 A Yes, I am.

4 Q And that he testified that he shot Kemo McCray, right?

5 A Correct.

6 Q That the get-away driver was Rakeem Baskerville, right?

7 A Yes.

8 Q And that the look-out was Jamal McNeil?

9 A Yes.

10 Q And that the person who was also on the scene and who
11 paid him was Hakim Curry?

12 A Yes.

13 Q And have any of those people, Paul Bergirin, Jamal McNeil,
Page 52

14 Rakeem Baskerville, or Hakim Curry, have they been charged
15 with any offense associated with the murder of Kemo McCray?

16 A None of those individuals are currently charged.

17 Q And no Grand Jury has been convened to determine their --
18 to check the evidence against them?

19 A I can't comment on that, Mr. Herman.

20 Q Okay.

21 As of today, this is how many years after the murder?

22 A I guess it would be a little over three years after the
23 murder.

24 Q All right.

25 And the only people who have been charged are Mr.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6279

1 Baskerville, right?

2 A Yes.

3 Q And Anthony Young?

4 A That is correct.

5 Q And Anthony Young will not receive the death penalty. Is
6 that correct?

7 A That is correct.

8 Q And that's because of a deal or a negotiation that was
9 conducted between your office and Anthony Young. Is that
10 correct?

11 A Yes, in exchange for his cooperation and other factors,
12 yes.

13 Q And he may or may not get a life sentence.

14 Is that your understanding?

15 A That would be up to the judge presiding over the case.

16 Q But it's your intention or the intention of your office,
17 if they believe that he has cooperated substantially with this
18 prosecution, that either Mr. Minish or Mr. Frazer would write
19 a letter to the sentencing judge and make the judge aware of
20 his cooperation. Is that correct?

21 A That is correct.

22 Q And that's called a 5K motion or a downward departure
23 motion. Is that right?

24 A Yes.

25 Q And if the judge granted that motion, the Government

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6280

1 motion, the judge could, if he or she wanted to, give the
2 shooter in this case less than a life sentence?

3 A That is correct.

4 Q Now, William Baskerville did not personally shoot Kemo
5 McCray. Is that correct?

6 A The evidence that I know of, he did not personally shoot
7 him, yes.

8 Q Well, do you have any evidence that he did personally?

9 A No, absolutely not, Mr. Herman.

10 Q Are you relying on what Anthony Young told this jury to
11 be the best of your knowledge as?

12 A Absolutely. I don't believe Mr. Baskerville was the
13 shooter, but since I wasn't there, I can only rely on what
14 other people have told me about it.

15 Q When people are convicted of federal crimes, they go to
16 federal prison. Is that right?

17 A Yes.

18 Q Have you ever done defense work at all?

19 A No, I haven't. I have been a prosecutor since I got out
20 of law school.

21 Q Okay.

22 But you have been to federal prisons, right?

23 A Actually, I have not been to a federal prison, Mr.

24 Herman, but I've been to some federal detention centers.

25 Q Not a place that you would necessarily want to go to?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6281

1 A Probably not, no.

2 Q All right.

3 And as it turns out, Mr. Curry, Hakim Curry is in
4 federal prison now. Is that right?

5 A That is correct.

6 Q And do you know where he is, by the way?

7 A I'm not sure exactly which facility he is in. I know he
8 was slated to go to Florence, in Arizona, but I believe he got
9 moved to maximum security prison in Colorado, if I'm not
10 mistaken.

11 Q So that's what they call the administrative maximum, the
12 ad max?

13 A Yes.

14 Q The super max, have you heard that?

15 A Yes, I've heard that as well.

16 Q That's a prison in Colorado, about two and a half hours
17 from Denver, way in the foothills?

18 A I understand it's in Colorado. I'm not sure exactly
19 where it is.

20 Q But it's the most secure federal prison in the United
21 States. Is that correct?

22 A That's my understanding, yes.

23 Q That's where Mr. Curry is or is headed?

24 MR. MINISH: Judge, we object to this line of
25 questioning.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6282

1 THE COURT: Where are we going?

2 MR. HERMAN: I can make a proffer.

3 THE COURT: All right, go ahead.

4 I'll permit it.

5 Q Is that where you believe Mr. Curry is or is headed?

6 A Yes.

7 Q All right.

8 And Rakeem Baskerville, he's also doing a life
9 sentence. Is that right?

10 A That is correct.

11 Q On a case that you handled, right?

12 A Yes.

13 Q And he's in federal prison as well. Is that correct?

14 A Yes, he is.

15 Q Paul Bergrin is still practicing law in Newark as far as
16 we know?

17 A As far as I know he is, yes.

18 MR. HERMAN: That's all I have.

19 Thank you, Mr. Gay.

20 THE COURT: Any redirect?

21 MR. MINISH: Yes.

22 REDIRECT EXAMINATION BY MR. MINISH:

23 Q Mr. Gay, Mr. Herman asked you about the process that you
24 don't need the Grand Jury for, if you have probable cause you
25 can go get a complaint.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6283

1 Could you explain, as the supervising Assistant United
2 States Attorney, how the process works and what it is you look
3 for?

4 A Normally, an assistant would come to me, agents will come
5 to an assistant and present a case to them. They will make an
6 evaluation of whether they believe there's sufficient evidence
7 to prove the case.

8 They then draft a complaint, come to me. They discuss
9 the case with me and if there is sufficient evidence, I
10 approve the complaint.

11 As I said, normally, although the probable cause is the
12 legal standard for getting an arrest warrant, our standard of
13 prosecution is significantly higher, because it doesn't make
14 any sense for us to issue an arrest warrant for somebody if we
15 don't think ultimately we can prove the case against them at
16 trial.

17 So the realistic standard for a prosecutor is do we
18 believe we can prove the case beyond a reasonable doubt? If
19 we believe that, we then will get a complaint signed, which
20 establishes probable cause and seek an arrest warrant from the
21 magistrate judge.

22 Q Now, how many witnesses -- let me ask this: Who made a
23 charging decision to ultimately charge at the Grand Jury the

24 defendant with the counts involving murder? Who was the lead
25 attorney at that time?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6284

1 A Well, I was the lead attorney at that time.

2 Q How many witnesses did you speak to who spoke of Mr.
3 Baskerville's involvement before making that decision?

4 A Well, I mean, we spoke to -- I mean, well over, I'd say,
5 ten to 15 witnesses at least, probably more than that before
6 making a decision.

7 Some of them were individuals that had direct
8 knowledge, some of them had knowledge of things. We spoke to
9 the eye witnesses to the murder, we spoke to individuals that
10 Mr. Baskerville had spoken to in jail, we spoke to obviously
11 Mr. Young, who was the participant in the crime, we spoke to
12 various law enforcement officers, but it was significant -- it
13 was a significant number of witnesses.

14 Q Among those witnesses, were there witnesses who provided
15 to you admissions with respect to the murder made by the
16 defendant?

17 A Yes.

18 Q Let's take Anthony Young to the side.

19 Prior to him coming forward as a witness, what was your
20 decision, if any, with respect to charging the defendant?

21 A Based on the evidence we had before we spoke to Mr.
22 Young, we had decide -- had made a decision we were going to
23 indict Mr. Baskerville for the murder of Kemo DeShawn McCray,
24 for conspiring to murder Kemo DeShawn McCray.

25 Q So was your case ultimately, when it was presented to the
Page 58

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6285

1 Grand Jury, based solely on Anthony Young's statements?

2 A No, it was not. I mean, we had made the decision
3 beforehand, but Mr. Young actually before we presented the
4 case to the Grand Jury, Mr. Young had come forward, so we did
5 -- it was basically the Grand Jury presentation had some of
6 Mr. Young, but it also had the other witnesses, including Eric
7 Dock, Eddie Williams, Rick Hosten, plus we had other
8 information from Troy Bell and Romaine York and I don't recall
9 who else, but we had other witnesses as well.

10 Q But you had other witnesses to corroborate Mr. Young?

11 A Correct.

12 Q Mr. Herman asked you about the process for charging and
13 then he stopped you at the death penalty thing.

14 I'd like you to continue and explain to the jury what
15 the process is involved in seeking the death penalty from the
16 prosecution side.

17 MR. HERMAN: Objection, Judge.

18 THE COURT: What's the purpose of this?

19 MR. MINISH: Defense counsel has gone to great length
20 to question how and when charges are made and specifically who
21 and when people are charged with a death penalty. He went to
22 great length to do that. Mr. Gay should certainly be able to
23 explain the actual process.

24 MR. HERMAN: I didn't ask anything about the death
25 penalty, just the charge.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.
Page 59

1 MR. MINISH: That they're not charging --

2 THE COURT: Let's take a break, folks. You can go
3 into the jury room, the alternates can go into chambers.

4 THE CLERK: All rise.

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1 (Jury is excused and the following takes place out of
2 the presence of the jury.)

3 THE COURT: Have a seat.

4 Here's what he asked. This is page 48 according to
5 the daily transcript that I'm looking at on my screen.

6 "It could have been characterized as a joint
7 investigation, at least in the beginning?

8 "ANSWER: Yeah, I guess that could probably be
9 accurate.

10 "QUESTION: And in terms of the charging decisions?

11 "ANSWER: Yes.

12 "QUESTION: And to who would be charged, who makes
13 that decision within the U.S. Attorney's Office.

14 "ANSWER: Well, it depends on the type of case it
15 is. If you're talking about this one specifically, I can go
16 through that or I can give you the general way it works.

17 "QUESTION: Tell us, this case specifically, who has
18 made decisions as to who would be charged in the murder of
19 Kemo McCray?

20 "ANSWER: The decisions were made by, obviously, the
21 line assistant had input in consultation with the supervisor,
22 which at the time was, when we initially charged this case,
23 was me, with consultation with those above me, including Nancy
24 Hoppock, Amy Winkelman and also individuals in the executive
25 as well, including Mr. Christie. That would be for charging

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6288

1 hi m.

2 "As far as in this case, since it's a death penalty
3 eligible case, there is an entire other level of review as
4 well, which I can discuss if you would like, Mr. Herman.

5 "QUESTION: No, I'm actually just talking about the
6 charging process."

7 Then he gets into a line of questioning about the
8 complaint and going to the Grand Jury.

9 Mr. Minish.

10 MR. MINISH: That's sort of the point, Judge. The
11 defense counsel wants to walk up to the line and say basically
12 tell us about the charging, use that information to argue that
13 other people have not been charged, and sort of imply that
14 they're also not facing the death penalty, but conveniently
15 leave that factor out.

16 Obviously, and factually inaccurate, but I think it's
17 unfair to limit the Government now to follow-up and explain
18 what the actual process is.

19 THE COURT: But the actual process, I'm assuming,
20 Mr. Gay would get into the actual process which would be the
21 Attorney General's committee and that presentation, but that's
22 really neither here nor there, because there wasn't, to my
23 knowledge, anybody else presented to that committee other than
24 Mr. Baskerville.

25 MR. MINISH: Well --

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6289

1 THE COURT: Right?

2 MR. MINISH: It's actually not factually accurate,
3 but not my point.

4 Because Mr. Young also has to go through the process.

5 THE COURT: Okay.

6 MR. MINISH: But that's not really the point.

7 THE COURT: What's the point?

8 MR. MINISH: The point, Judge, is that ultimately
9 defense counsel is going to stand up and at minimum, imply
10 that these other people are not facing the death penalty.

11 They can carve out their mitigating factor as they
12 have with saying they have not been charged, but the clear
13 implication is they're not facing the death penalty, so you
14 can't find it for my client.

15 So the process to cut off Mr. Gay and not allow him
16 to explain the entire process, albeit not having been employed
17 for these other people, is certainly relevant to the line of
18 questioning, that there is layers, there are decisions being
19 made. It's, I'm sure, not much more than 30 seconds.

20 THE COURT: Is it your intention, you want to elicit
21 from Mr. Gay that in addition to the charging process that he
22 testified about, with respect to death penalty authorization,
23 he had to go to Washington?

24 MR. MINISH: Correct, Judge.

25 THE COURT: All right.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6290

1 MR. MINISH: And then, yes. Absolutely.

2 THE COURT: Anything wrong with that?

3 MR. HERMAN: Sure. We're not -- you can't go to
4 Washington on a case that you don't have, that they haven't
5 brought, number one. It's going to give the jury the

6 impression that the Attorney General of the United States
7 himself authorized the death penalty be sought in this case,
8 which is true but irrelevant.

9 THE COURT: Then why did you even ask him all of
10 that?

11 MR. HERMAN: What?

12 THE COURT: Why did you ask him then?

13 MR. HERMAN: All I asked him, in line with our
14 mitigating factor four, others responsible for committing the
15 death of Kemo or any other crime associated with his murder.
16 That's all I'm asking.

17 What's the process, how do you charge somebody and he
18 described the process. He says they haven't been charged.
19 That's all I'm saying.

20 MR. MINISH: Judge, factually, again to be accurate,
21 it's incorrect to say we have to charge somebody before we
22 present a case to Washington. That's not actually true.

23 THE COURT: I'm trying to understand the probative
24 value and the relevance of any of this procedural, this course
25 on criminal procedure that's being given to the jury. I'm

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6291

1 trying to understand -- I understand Mr. Gay's testimony with
2 respect to obstruction of justice as to the effect on the
3 investigation caused by the death of Mr. McCray and I
4 understand the line of cross-examination with respect to the
5 mitigating factor as to equal culpability of others, but I
6 don't understand, frankly, the balance of his testimony and
7 how it has any probative value to any issue in this case.

8 MR. MINISH: Again, Judge, it's an area that defense
9 counsel opened up.

10 THE COURT: I understand that.

11 MR. MINISH: The Government's position is very simply
12 that while the mitigating factor may be carved out
13 specifically to charge, I don't think it's a great leap of
14 logic to imply that charging also means they're not facing the
15 death penalty.

16 Mr. Gay can explain that process, the balance of it
17 and again, this is --

18 THE COURT: What is he going to explain? They're
19 not charged. Therefore, they are not facing the death
20 penalty. That's a given.

21 MR. MINISH: Well, the process.

22 THE COURT: Why do we need to go into another
23 process?

24 MR. MINISH: Why did we go into the process at all
25 about charging? The same reason. Defense counsel didn't

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6292

1 simply ask the question are they charged, he went through the
2 entire process.

3 THE COURT: I understand.

4 I'm sustaining the objection. I don't find it to be
5 pertinent, probative or relevant.

6 MR. FRAZER: Are we going to raise now Agent Manson's
7 testimony?

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JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6293

1 THE COURT: Yes, this might be a good opportunity
2 to do that.
3 Mr. Gay, step down, take a break.
4 Agent Manson is here.
5 Step up, Agent.
6 She's already under oath.
7 Is that all right with you?
8 MR. HERMAN: Yes, sir.
9 THE COURT: Agent Manson, previously sworn.
10 S H A W N M A N S O N, previously sworn, resumes
11 the stand.

DNJ 03-836 Vol 11

12 THE COURT: Have a seat, Agent.

13 THE WITNESS: Thank you.

14 MR. MINISH: I'm not sure what you would like me to

15 do.

16 THE COURT: We got into this -- let's make a proffer

17 as to what is the issue here?

18 MR. MINISH: Well, the issue, Judge, under the

19 obstruction --

20 THE COURT: She's going to testify, as I understand

21 it, that Horatio Joines and Mark Joseph, two individuals with

22 whom the defendant has been associated, as I understand it,

23 told her that they were somehow intimidated?

24 MR. MINISH: Well, they are unwilling to come forward

25 because of the act specifically.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6294

1 THE COURT: Let's get into that.

2 Go ahead. That's the issue.

3 MR. MINISH: I don't want to -- that was defense

4 counsel's words, intimidate. I don't want to misstate this

5 for the Court.

6 The idea is that because of Kemo's murder these

7 witnesses --

8 THE COURT: Let's get it in context from Agent

9 Manson. When did she speak to these people? What did they

10 tell her? When did this come out? How is it probative,

11 relevant and to what aggravating factor? That's what I'd like

12 to know.

13 MR. MINISH: The legal part from me would be the

14 obstruction of justice.

15 THE COURT: I understand.

16 Let's find out what the context of this is.

17 VOIR DIRE DIRECT EXAMINATION BY MR. MINISH:

18 Q Did there come a time when you spoke to an individual
19 named Mark Joseph?

20 A Yes, there did.

21 Q Okay.

22 And did you -- how did you get in contact with Mark
23 Joseph or how did he come to your attention?

24 A He came to my attention through Eric Dock, when we had
25 interviewed Eric Dock. He mentioned there was another

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6295

1 individual that William Baskerville confided in on a regular
2 basis and was very close to.

3 He gave me his name as Supreme and then we were later
4 able to determine that that was Mark Joseph.

5 So once we had determined his identity, I went down to
6 speak to Mark Joseph at Monmouth County jail where he was
7 incarcerated on federal charges.

8 Q Did you ask him whether or not he did, in fact, have
9 information relating to the defendant and the murder of Kemo
10 McCray?

11 A Yes, I did.

12 Q And what did he tell you?

13 A He said that he had information relating to the murder of
14 a federal informant and information regarding William
15 Baskerville's involvement in that murder.

16 Q And did you ask him what that information was?

17 A Yes, I did.

18 Q And did he tell you?

19 A He said that he would not provide that information to me
20 until I could guarantee that he not be deported, because at
21 that point he was facing deportation, and that I could
22 guarantee his safety and the safety of his family.

23 Q Did you make any attempts to make Mr. Joseph and his
24 family feel safe?

25 A What I did is after I had met with Mr. Joseph, I went to

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6296

1 John Gay, who was the prosecuting attorney at that time, and
2 explained this to him and yes, I did make efforts with I.N.S.
3 at that time to see what we could do as far as deportation.

4 And I also started the process of trying to make his
5 family safe, yes.

6 Q Okay.

7 I guess the wording --

8 THE COURT: May I ask a question?

9 Was he eventually removed? Was he deported?

10 THE WITNESS: Yes.

11 THE COURT: When was he deported?

12 THE WITNESS: I don't know the exact date, but he
13 was deported. I know it was fairly recently. Most likely
14 within the past year or so.

15 THE COURT: All right.

16 Q At the time did you make known to Mr. Joseph what the
17 F.B.I. would be willing to do with regard to safety?

18 A Absolutely. I explained to him the whole process of if
19 he is not deported and he stays in the country, we could
20 relocate him, we could relocate his family, he would be
21 eligible for Witness Security or the Witness Protection
22 Program.

23 I also explained to him if he was still incarcerated,
24 there's ways to protect his safety while incarcerated.
25 There's a facility that we use that keeps cooperators in a

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6297

1 whole different federal prison to keep them safe.

2 Q Okay.

3 That's Wit Sec?

4 A The prison version of Wit Sec, yes.

5 THE COURT: May I ask a question?

6 You say -- did you intercede with Customs, the Bureau
7 of Customs and Immigration?

8 THE WITNESS: I had started the process of talking
9 to them.

10 THE COURT: Do you have the ability, do you have the
11 jurisdiction to intercede into a removal proceeding?

12 THE WITNESS: No, I do not.

13 THE COURT: Because I know I don't. I'm curious to
14 know whether you do.

15 THE WITNESS: At this stage in the investigation, I
16 was merely trying to find out why he was being deported and
17 what the underlying facts were and what we could do, if
18 anything, to assist him in staying in this country legally, if
19 there was any way to do that. That was a process I had

20 started, it never got further than that.

21 I talked to his defense counsel who I can't recall
22 their names, but they were defense counsel in New York and I
23 spoke to them. I know his case had been under several
24 different appeals. Maybe two or three times it was appealed.

25 THE COURT: His immigration case?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6298

1 THE WITNESS: Yes.

2 THE COURT: And he was eventually removed, which is
3 why he's not available?

4 THE WITNESS: Well, it was his choice. I can't say
5 that I promised him he could stay in the country, but he made
6 the choice that he would feel safer being deported back to his
7 country of origin rather than testifying.

8 Q Did he, in fact, ever express to you why he was concerned
9 about testifying?

10 A Yes, because they would kill him.

11 Q What -- when you say "they," who is they?

12 A They meaning the Baskerville family, William Baskerville,
13 his associates.

14 Q And what, if anything, did he tell you specifically made
15 him think that?

16 A He knew that they had killed a federal informant already
17 and that if he testified or cooperated in any way, that they
18 would kill him as well. He was very close to William
19 Baskerville and knew that this is how William Baskerville
20 operated.

21 THE COURT: Close to him how?

22 THE WITNESS: Close to him as far as being a
23 confidante. He had himself told me that. He said, I know him
24 very well. I have been incarcerated with him. He and I speak
25 on a regular basis.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6299

1 THE COURT: He wasn't on the street with Mr.
2 Baskerville, he met him in jail?

3 THE WITNESS: In jail, yes.

4 MR. MINISH: That's basically it, Judge.

5 THE COURT: How about Mr. Joines?

6 VOIR DIRE DIRECT CONTINUES BY MR. MINISH:

7 Q Agent, did there come a time when Mr. Joines became --
8 got on the F.B.I.'s radar with respect to perhaps having
9 information regarding the murder of Kemo McCray?

10 A Well, we arrested Horatio Joines subsequent to the arrest
11 of William Baskerville and we knew he had information about
12 William Baskerville's drug activity and we believed he also
13 had information about the death of Kemo.

14 We arrested him --

15 Q I want to interrupt you for a second so the Judge has
16 context.

17 When you say subsequent to the defendant's arrest, was
18 it also subsequent to Kemo's murder?

19 A Yes, it was.

20 Q Okay.

21 A It was.

22 Q And after the arrest, did you get the opportunity to
23 speak with Horatio Joines?

24 A We spoke to Horatio Joines, he provided us information
25 regarding his involvement with William Baskerville and his

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6300

1 drug dealing activities and he also made it be known that he
2 would not cooperate against William Baskerville out of fear
3 for his life and his family's life.

4 Q So just so the Judge is clear, he indicated he had
5 information, but was unwilling to provide it?

6 A Exactly.

7 THE COURT: Has he been charged, Horatio Joines?

8 THE WITNESS: Yes, he has.

9 THE COURT: He's been prosecuted?

10 THE WITNESS: He has not yet pled guilty, I believe,
11 but.

12 MR. MINISH: Actually, that's an area for the Court
13 to consider.

14 Q Could you explain to the Judge what the status of Mr.
15 Joines' plea is?

16 A Several months ago, he was scheduled to be in court to
17 enter his plea. When it came time for him to allocute to the
18 factual basis, there was a statement in there regarding his
19 involvement in the conspiracy with William Baskerville and at
20 that point he pulled back his plea and said that he will not
21 allocute to his involvement with William Baskerville and did
22 not want to implicate William Baskerville.

23 I spoke to him briefly afterwards while he was at the
24 defense table. He motioned for me to come over. I went over
25 and spoke to him and he said, I'd like to speak to you. I'd

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6301

1 I like to proffer, I'd like to cooperate.

2 So at that time we then brought him in to the United
3 States Attorney's Office and we interviewed him.

4 He said that he does not want to go to jail, he does
5 not want to go to trial, he has no problem saying what he has
6 done, but that he is not comfortable implicating William
7 Baskerville out of fear for his life. And to this day he has
8 not entered his plea as a result of that.

9 Q And the strategy, so the Court's clear, was to wait until
10 after this trial and then allow him to plead?

11 A Right.

12 Q Without implicating the defendant?

13 A Yes.

14 THE COURT: Let me ask you this question, as to Mr.
15 Joines, as to Horatio Joines: When did you tell Mr. Minish
16 and Mr. Frazer about all of this?

17 THE WITNESS: Well, they have been involved in the
18 whole process with Mr. Joines.

19 THE COURT: They knew about this business with Mr.
20 Joines all along?

21 MR. MINISH: The plea, Judge, is different. I was
22 present initially at the plea.

23 Q I think what the Judge is asking about our conversation,
24 specifically about your testimony.

25 A About how he feared for his life?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

1 THE COURT: Yes.

2 THE WITNESS: You know, I can't recall if I raised
3 it back when he came into our -- when he came to proffer
4 because we cut the proffer short because it was clear he was
5 not going to be truthful with us. At that point he had --

6 THE COURT: My question to you is: To your
7 knowledge, to your knowledge, how long has Mr. Minish and Mr.
8 Frazer known about Horatio Joines being a reluctant witness
9 because of some fear or intimidation from Mr. Baskerville and
10 his associates?

11 THE WITNESS: I would say, again going back to that
12 time we proffered.

13 THE COURT: How long ago was that?

14 THE WITNESS: That was many months ago.

15 THE COURT: What about the other person, Mark
16 Joseph? When did you speak to Mr. Minish or Mr. Frazer about
17 Mark Joseph?

18 THE WITNESS: That was very recent.

19 THE COURT: How recent?

20 THE WITNESS: Within the past few days.

21 THE COURT: Okay.

22 Anything further?

23 Do you have anything you want to ask, Mr. Herman?

24 MR. HERMAN: Mr. Dock, are they proffering with
25 regard to Mr. Dock?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

1 THE COURT: I'm sorry?

2 MR. FRAZER: As far as obstruction of justice?

3 MR. MINISH: Yes, he's another person that the agent
4 can testify to. That the defendant was -- based on the
5 defendant's actions, he was reluctant to testify when and
6 until he -- again, it's my proffer is basically this: That
7 while Eric Dock provided the log in May of '04, when he was
8 contacted by the agent, what he said was I'm not talking to
9 you or cooperating or starting to go down this witness road
10 when and until my family is moved to safety.

11 THE COURT: Didn't he testify about something like
12 that? He talked about, Mr. Dock, about having his lawyer
13 present, he gave the log to his lawyer, he wouldn't give it to
14 anybody else?

15 MR. MINISH: The log was out there. I'm not talking
16 about the log, but when Agent Manson went to speak to him
17 because we have to remember that there is a, what do you call
18 -- there was another AUSA and another F.B.I. agent who were
19 involved in reading the log, to make sure there was no
20 information that the trial team could not get, there was a
21 separation of that.

22 The idea was that they were doing what they were
23 doing, AUSA Brian Howe and the Taint Team was set up for the
24 log, but when Agent Manson went to speak to Eric Dock to
25 basically say, what do you have, what's going on? He said, I

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6304

1 am not going to testify out of fear until you move the family.

2 THE COURT: Okay.
Page 76

3 MR. MINISH: Judge, just so it's clear and I don't
4 know if you want to send the agent out or you have follow-up
5 questions with the information, but the information again as
6 far as Mr. Frazer or I receiving the information about the
7 witnesses, I was well aware that the defendant, Mr. -- Mr.
8 Joines, the defendant in another matter, did not plea and was
9 unwilling to implicate Mr. Baskerville in that drug
10 allocution.

11 With respect to him actually saying I have murder
12 information, but I'm not willing to talk to you about that,
13 which is what we're seeking to elicit, not about the drug
14 information because that's not appropriate, that's what our
15 conversation was last night that I spoke of with your Honor.

16 Again, we basically asked the agent was what, if any
17 information, do you have that implied or the implication of
18 the defendant's actions caused problems in the case? That's
19 when Mark Joseph came up and that's when Horatio Joines
20 specifically saying, I have murder information also.

21 I have been aware, as I'm sure defense counsel has,
22 if he has spoken to Mr. Joines' defense counsel, because the
23 only reason he has not pled is because we said, he's unwilling
24 to implicate Mr. Baskerville in a drug charge, which we would
25 not seek to put before this jury or any implication of the

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6305

1 death penalty.

2 We were limiting very specifically as to the murder
3 as we felt it was appropriate. That is when the information
4 came up.

5 Again, I don't see there's any great prejudice to
6 defense counsel. They've now gotten far more than a fair
7 proffer. They certainly can cross Agent Manson with respect
8 to these things and it also, the information is certainly fair
9 information to go before this jury, that while perhaps not the
10 direct intention -- actually, I'll tell you, I won't concede
11 that.

12 It was the direct intention of William Baskerville to
13 take out Kemo as a witness, that a message was very clearly
14 sent to all who can hear, that if you mess with me, there's
15 problems and I think it's fair that the agent can testify to
16 the problems that again the defendant's direct actions had on
17 her investigation.

18 THE COURT: All right, I'll think it over.

19 I have to tell you, I'm having trouble with Mr. --
20 more trouble with this Mr. Joseph than I am with Joines, but
21 I'll think about it.

22 Dana, please tell the jury we're taking a break and
23 we'll be with them momentarily.

24 THE CLERK: All rise.

25 (Recess.)

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6306

1 THE COURT: What's going on?

2 THE CLERK: The lunch has just arrived.

3 THE COURT: About how much longer with Mr. Gay do
4 you think you have?

5 MR. MINISH: Thirty seconds, a couple minutes.

6 THE COURT: I don't want to hold him hostage.
Page 78

7 MR. MINISH: I'm sure he would appreciate that.

8 THE COURT: Who's next?

9 MR. MINISH: Inspector from the East Orange Police
10 Department, who would also presumably be very short.

11 THE COURT: Let's get Mr. Gay finished and the
12 Inspector from East Orange and then we'll have lunch.

13 Tell them we'll have short testimony and a lunch
14 break. That will give us a chance to discuss this Agent
15 Manson's problem, not her problem, the problem presented by
16 the testimony of Agent Manson.

17 After the person from East Orange, then what?

18 MR. FRAZER: I'm not sure yet, because we have
19 civilian witnesses, obviously. It's not clear. I'm not sure
20 yet. We have certainly Agent Manson obviously and we have
21 three civilian witnesses.

22 MR. MINISH: We prefer to put the civilians on even
23 if it's out of order.

24 THE COURT: I don't blame you. Put them on and then
25 we'll deal with Manson, if that's okay.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6307

1 Let's get the jury and the alternates.

2 Is Mr. Gay outside?

3 MR. FRAZER: Yes.

4 You want me to get him?

5 THE COURT: Sure.

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JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6308

1 J O H N G A Y, previously sworn, resumes the
2 stand.

3 THE CLERK: All rise.

4 (The following takes place in the presence of the
5 jury.)

6 THE COURT: Take your seats, folks.

7 We've had a chance to work out the legal issues
8 presented, we've also had a chance to take our morning break.

9 What we're going to do is this: Conclude the
10 testimony of Mr. Gay. There is another witness who is billed
Page 80

11 as a very brief witness and then we'll take a lunch break.

12 Lunch is going to be short today, I caution you in advance.

13 Okay, Mr. Minish, go ahead.

14 MR. MINISH: Thank you.

15 REDIRECT EXAMINATION CONTINUES BY MR. MINISH:

16 Q Mr. Gay, on cross-examination, Mr. Herman seemed to imply
17 you got all the evidence in, what was the big deal?

18 MR. HERMAN: Objection.

19 THE COURT: Rephrase the question. I don't know
20 what the context --

21 Q I'll just ask the question.

22 What problem, prior to the Court's ruling of letting
23 Kemo DeShawn McCray's evidence come in, what issues did you
24 personally have to deal with?

25 A Well, there were, I guess, three primary issues. The

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6309

1 first is that since Kemo DeShawn McCray was dead, testimony or
2 things that only he was a witness to were not going to be
3 admissible at trial because I just couldn't recreate that in
4 any manner.

5 The second thing is although the F.B.I. during their
6 investigation had done things to corroborate what Mr. McCray
7 said, there were also getting those into evidence. As I said
8 before, the tape-recorded conversations, number one, there was
9 an issue with respect to authenticating those tapes, which
10 although ultimately we overcame, initially it certainly was
11 not a foregone conclusion that those tapes were going to come
12 into evidence at trial.

13 The second hurdle or the third hurdle, I guess, is the
14 actual hearsay problem. Since the statements of Mr. McCray
15 were out-of-court, they couldn't necessarily be introduced in
16 court unless we met a certain burden. Again, that burden was,
17 at least partially, we had to show, among other things, that
18 Mr. Baskerville had caused the unavailability of Mr. McCray.

19 We were able to ultimately meet that hurdle, but it was
20 not a foregone conclusion that we would have been able to do
21 that. If we hadn't met either of those hurdles, then we
22 wouldn't have been able to introduce the tapes or any
23 testimony or other prior statements of Mr. McCray, we
24 basically would not have had a case, a drug case against Mr.
25 Baskerville.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6310

1 MR. MINISH: Nothing further.

2 THE COURT: Anything further?

3 MR. HERMAN: No.

4 THE COURT: Thank you, Mr. Gay.

5 You're excused.

6 THE WITNESS: Thank you, your Honor.

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JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6311

1 THE COURT: Next witness.
2 MR. MINISH: Judge, at this time the Government calls
3 Inspector Paul Davis of the East Orange Police Department.
4 P A U L D A V I S, sworn.
5 THE CLERK: State your full name and spell it for
6 the record.
7 THE WITNESS: Paul Davis, D-a-v-i-s.
8 DIRECT EXAMINATION BY MR. MINISH:
9 Q Sir, I just ask you to speak as close to the microphone
10 as you can.
11 A Okay.
12 THE COURT: It's hard to get too far away from it in
13 that seat.
14 Q Mr. Davis, by whom are you employed?
15 A East Orange Police Department.
16 Q Okay.

Page 83

17 How long have you been employed by the East Orange
18 Police Department?

19 A Twenty-eight years.

20 Q What is your current rank?

21 A Inspector.

22 Q And what does that involve, what duties are you involved
23 in?

24 A I'm in charge of operations, street operations,
25 day-to-day.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6312

1 Q I'm going to refer you back to December 7, 1991.

2 At the time were you employed as an East Orange police
3 officer?

4 A Yes, I was.

5 Q Do you recall what your rank was?

6 A Sergeant.

7 MR. MINISH: I move Government exhibit P-3 into
8 evidence.

9 THE COURT: Have you shown it to counsel?

10 MR. MINISH: We provided them a book.

11 MR. KAYSER: No objection.

12 (P-3, arrest record, is marked in evidence.)

13 Q Do you recognize what that is?

14 A Yes, I do.

15 Q Could you tell the jury what it is?

16 A It's an East Orange Police Department arrest record.

17 Q Now, during the course of your testimony, if you need to
18 refer to that, just let us know.

19 A Okay.

20 Q Specifically, again going back to the day of December 7,
21 1991, were you on duty on that day?

22 A I was working a part-time job.

23 Q Okay.

24 So no, you were not acting as a -- well, you

25 characterize it, what was your employment, were you working as

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6313

1 an East Orange police officer that day?

2 A It's a part-time employment. I'm a police officer but
3 it's part-time, not directly for the police department.

4 Q But you're a police officer 24 hours a day?

5 A That's correct.

6 Q Now, what day of the week was December 7th of 1991, do
7 you recall?

8 A Saturday.

9 Q What was -- you said part-time job.

10 Explain to the jury what your part-time job was that
11 day.

12 A We were working for an auto auction on Central Avenue in
13 East Orange.

14 Q What did auto auction all actually do?

15 A Auction their cars, used cars.

16 Q If you can paint the picture a little for the jury, what
17 did the set up look like with the cars?

18 A It's a large parking lot and they have a number of
19 vehicles, all makes and models. They're all used cars.

20 They're out in a lot and the people who wish to buy

21 them, they get to look at them before they bring them into the
22 building, which is when the auction starts. They bring them
23 in one at a time, they'll drive them in.

24 The people already had a chance to look at the cars.

25 Q And what was -- you said it was a part-time job.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6314

1 What was your responsibility at auto auction?

2 A Security.

3 Q And why was there a need for security?

4 A There was a great deal of money involved in the business,
5 a lot of people use cash to buy the cars.

6 Q On that day, December 7, 1991, did you come in contact
7 with a man you later knew to be identified as William
8 Baskerville?

9 A Yes, I did.

10 Q I know it's a long time ago, but do you see him in court
11 today?

12 A I believe so.

13 The gentleman with the beard.

14 Q You're not sure?

15 A At the time there was no beard, but he looks familiar
16 from here.

17 Q Explain to the jury how you were dressed that day.

18 A Plain clothes, badge on the chain around the neck.

19 Q Okay.

20 Like in TV, those thin metal chains?

21 A Absolutely.

22 Q Did there come a time when something drew your attention
Page 86

23 to William Baskerville?

24 A Yes.

25 Q Could you explain to the jury what you did when you

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6315

1 approached Mr. Baskerville?

2 A I identified myself as a police officer, informed him
3 that he would have to leave the auction.

4 Q Okay.

5 Was he by himself?

6 A There were two other individuals.

7 Q Who were with the defendant or with you?

8 A They were actually with him. Later on I realized they
9 were with him.

10 Q And what was the defendant's reaction to you telling him
11 he had to leave?

12 A Questioning me in reference to why he had to leave.

13 Q And what did you tell him?

14 A He had to leave.

15 Q And did he, in fact, leave?

16 A Again, I advised him that he had to leave and he became
17 aggravated and upset and basically refused.

18 Q Did you put, at this point in the facts you've given to
19 the jury, had you physically touched the defendant?

20 A No.

21 Q Did there come a time when the defendant touched you?

22 A Yes.

23 Q Okay.

24 Could you explain that to the jury?

25 A Again, I explained to him that he would have to leave.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6316

1 Suddenly he shoved me onto a hood of one of the cars in the
2 lot and started swinging on me.

3 Q Okay.

4 You say he shoved.

5 How did he actually do it?

6 A In the chest, which sent me over the hood -- on top of
7 the car, on the hood of the car.

8 Q You were close to the vehicle when he pushed you?

9 A Yes, I was.

10 Q Okay.

11 So you're falling backwards across the front or the
12 side?

13 A The front of the vehicle.

14 Q Where -- once you fell on your back, where was the
15 defendant in relation to you?

16 A On top of me.

17 Q You said he was trying to swing at you.

18 If you can tell the jury what happened after that?

19 A All right. The hood of the vehicle, I'm on my back and
20 he's -- when he shoved me, I went on my back and he
21 immediately jumped on me and started swinging. I'm grabbing
22 my hands, trying to prevent him from striking me.

23 Q And were you able to prevent him from striking you?

24 A Yes.

25 Q Okay.

1 What happened -- go through the version of what
2 happened to you.

3 A I grabbed his arms. I was able to gain leverage on him.
4 Once my -- once I was able to push him back and get my feet
5 back on the ground.

6 Q And did any officers come to your assistance?

7 A Soon after that, one of the officers observed me
8 struggling with this individual and came to assist me.

9 Q Was that another part-time employee officer?

10 A It was another East Orange police officer, yeah.

11 Q Okay.

12 Not part-time officer, doing a part-time job?

13 A Yes.

14 Q As a result of that action, was the defendant arrested?

15 A Yes, he was.

16 Q And what was he charged with?

17 A Aggravated assault on a police officer.

18 Q Okay.

19 Did you receive any injuries?

20 A Minor, you know, bruises. Nothing serious.

21 Q Ultimately, why was it aggravated assault if you were not
22 injured?

23 A Excuse me?

24 Q Why was he charged with aggravated assault if your
25 injuries were so minor?

1 A Assaulting a police officer in the duty, the charge is
2 aggravated assault.

3 I clearly identified myself that I was an East Orange
4 police officer and I was assaulted.

5 Q So ultimately the extent of your injuries did not affect
6 the charge?

7 A That's correct.

8 Q Now, ultimately, the defendant did not plead to
9 aggravated assault. Is that correct?

10 A I don't recall the actual outcome of the matter. I know
11 he was charged. Whether he pled to it, I don't recall.

12 Q Okay.

13 Did you ever testify?

14 A No, I didn't.

15 Q Okay.

16 So were you not personally involved in the resolution
17 of the case?

18 A That's correct.

19 MR. MINISH: I have nothing further.

20 THE COURT: Any questions?

21 MR. KAYSER: Yes, a couple.

22 CROSS-EXAMINATION BY MR. KAYSER:

23 Q Is it Inspector Davis?

24 A Yes, sir.

25 Q Now, Inspector of the East Orange Police Department?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

- 1 A That's correct.
- 2 Q At the time you were working part-time off duty at this
- 3 auction, car auction, correct?
- 4 A That's correct.
- 5 Q It was a regular auction that takes place on a regular
- 6 basis in East Orange?
- 7 A No longer, but at the time I would work on the Saturday.
- 8 Q And it's used cars being auctioned off, is that my
- 9 understanding?
- 10 A That's correct.
- 11 Q These cars have been seized or something by the police
- 12 department in East Orange or abandoned cars?
- 13 A It has nothing to do with the police department. It's a
- 14 private business that auctions cars.
- 15 Q Okay.
- 16 You were working, it's a side job for you?
- 17 A That's correct.
- 18 Q Which is normal for police officers to work side jobs,
- 19 correct?
- 20 A I'd say so.
- 21 Q You're not in uniform?
- 22 A That's correct.
- 23 Q All you have is a badge hanging a under your neck on a
- 24 chain or rope or something like that?
- 25 A It's a chain.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6320

- 1 Q Do you remember what else you were wearing that day, by
- 2 chance?

3 A More than likely, jeans, jacket, that's about it.

4 Q Looked like a regular guy, just at the auction, right?

5 You didn't have -- were you wearing any security guard

6 insignia or anything like that?

7 A No, I was not.

8 Q Okay.

9 And there was a dispute about payment for a car or
10 something at the time?

11 Do you recall that?

12 A I don't remember exactly what the problem was. I do know
13 he was creating a disturbance and I responded to that and
14 advised him that he'd have to leave.

15 Q You don't know what the merits of that dispute were at
16 this point at all?

17 A I don't recall.

18 Q It was just -- and at the time he was a young guy, he was
19 like 20, 21 years old, something like that, correct?

20 A I don't recall the exact age, but he was a young man.

21 Q 1991, right?

22 A Yeah.

23 Q You were a lot younger than?

24 A Sure I was.

25 Q And you wound up arresting him, the original charge was

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6321

1 aggravated assault on a police officer, right?

2 A That's correct.

3 Q That was downgraded to resisting arrest, correct?

4 A I really don't know.

5 Q Well, let me show you what's been marked P-3.

6 Do you recognize that document?

7 A It's an East Orange police arrest record.

8 You know what, this is in addition to the assault, the
9 resisting.

10 Q Okay.

11 So was he wound up being charged with both aggravated
12 assault on a police officer and resisting arrest?

13 A Yes.

14 Q Resisting arrest is a lesser included offense of
15 aggravated assault on a police officer?

16 A It goes -- you have the aggravated assault and there was
17 a struggle afterwards and the resisting, in addition to the,
18 it's two charges.

19 Q Okay.

20 And you never had to appear in court, correct?

21 A I don't recall appearing on this matter.

22 Q And do you know what the outcome was?

23 A No, I don't.

24 Q Well, if I represented to you -- that incident occurred
25 on 12/7/91, correct, December 7, 1991. Am I correct?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6322

1 A I'd have to take a look at the report again.

2 That's correct, December 7, 1991.

3 Q That's correct, right?

4 A That is correct.

5 Q And if I represented to you that a court record indicates
6 in prior court history for Mr. Baskerville that on 12/7 -- for

7 an incident that occurred on December 7, 1991, East Orange,
8 New Jersey, have you got the complaint there in front of you?

9 A Do do you mean the arrest record?

10 Q Yes.

11 A Yes, I do.

12 Q Is there a W470966 on it?

13 A I don't know what you're -- I don't see it.

14 Q Okay.

15 In any event, if I represented to you that this record
16 shows an offense for count one, aggravated assault on a police
17 officer, East Orange Municipal Court on July 14, 1993, it was
18 a guilty count, six months suspended sentence, \$150 fine.

19 Does that make sense to you?

20 A I really can't answer that. I don't remember going.

21 MR. MINISH: Judge, the inspector has indicated he
22 doesn't know, but we'll certainly stipulate to the record that
23 we were going to put in evidence anyway.

24 THE COURT: Okay.

25 MR. KAYSER: Thank you.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6323

1 No further questions.

2 THE COURT: Anything further?

3 MR. MINISH: A couple.

4 REDIRECT EXAMINATION BY MR. MINISH:

5 Q When you identified yourself as a police officer to the
6 defendant, how close were you to him?

7 A Arms-length.

8 Q Okay.

9 Did you make it as clear as you know how that you were
10 a police officer?

11 A More than once.

12 Q Mr. Kayser asked you about the merits of the dispute.

13 Is there an exception in the aggravated assault, if you
14 have a dispute with merits, that you're allowed to assault a
15 police officer?

16 A No, there isn't.

17 MR. MINISH: Nothing further, Judge.

18 THE COURT: Anything?

19 MR. KAYSER: Nothing further.

20 THE COURT: Thank you, Mr. Davis, you're excused.

21 We're going to take a lunch break now. I'm going to
22 try to finish lunch -- can it be done in 30 minutes? We're
23 going to have everybody back here ready to go at 12:45.

24

25

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6324

1 THE CLERK: All rise.

2 (Jury is excused and the following takes place out of
3 the presence of the jury.)

4 THE COURT: Have a seat.

5 I'm going to rule on the testimony of Agent Manson.

6 The statute says, "The rules of evidence do not apply
7 in the penalty phase of the case, except that information may
8 be excluded if its probative value is outweighed by the danger
9 of creating unfair prejudice, confusing the issues or
10 misleading the jury."

11 The statute goes on to say, "that both sides are
12 entitled to rebut any information received at the hearing and
13 shall be given fair opportunity to present argument as to the
14 adequacy of the information to establish the existence of any
15 aggravating or mitigating factors."

16 I find with respect to the testimony of Agent Manson
17 on the question of the obstruction of justice aggravating
18 factor that the proffer with respect to the statements
19 attributed to Mark Joseph are these: That Mark Joseph was an
20 individual who was in jail; that he met the defendant while in
21 jail; that according to the agent, Mr. Joseph told the agent
22 that the defendant made statements to Mr. Joseph from which
23 Mr. Joseph concluded that Mr. Baskerville was complicit in the
24 elimination of a witness against him.

25 If that were as far as it goes, it probably would be

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6325

1 admissible. The testimony wants to go another couple of steps
2 to say that Mr. Joseph was although in possession of that
3 information, did not want to come to court to testify about it
4 because he was fearful of retaliation himself.

5 Now, again, if that were as far as it went, it might
6 not be problematic, but we go yet another step and Agent
7 Manson testifies that Mr. Joseph, although would have been a
8 reluctant witness, would have at least been around and she was
9 taking efforts to insure his safety and give him some comfort
10 as to his circumstances.

11 Ultimately, however, it turns out that Mr. Joseph was
12 not a legal resident in the United States and was subject to

13 being deported; that although Agent Manson attempted to
 14 intercede on his behalf with the immigration authorities, she
 15 was unable to have any affect on his removal proceeding and he
 16 was ultimately removed.

17 I note also her testimony that there appears to be
 18 something in her testimony that Mr. Joseph told her that he
 19 was so fearful, he would rather be deported to Haiti than come
 20 to court, but suffice it to say, the reason he's not here,
 21 notwithstanding the efforts that have been demonstrated on
 22 behalf of other witnesses who expressed concerns for their
 23 safety, the reason he's not here is because of his removal.

24 With respect to Mr. Joseph at least, it appears to me
 25 that the testimony of Agent Manson as to what he would have

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6326

1 said or what he told her is the kind of evidence that is
 2 appropriate for the Court to exclude under even the death
 3 penalty statute because it creates, in my view, unfair
 4 prejudice and presents the defendant with a situation where
 5 the defendant is utterly unable to rebut the testimony of
 6 Agent Manson on the question of why Mr. Joseph may have been
 7 reluctant or why he's ultimately not here.

8 I'm going to preclude Agent Manson from testifying as
 9 to the unavailability or the reluctance of Mr. Mark Joseph.

10 The situation with respect to Horatio Joines,
 11 however, I find to be different. Horatio Joines was an
 12 individual who was mentioned during the course of this trial.
 13 Indeed, Agent Manson herself characterized Horatio Joines as
 14 one of the principle co-conspirators with the defendant in the

15 drug conspiracy.

16 Mr. Joines expressed to Agent Manson the knowledge
17 that he had about the case and the reason that he was not only
18 reluctant to come to court, but adamantly refused to testify
19 in any way to cooperate or implicate Mr. Baskerville.

20 Mr. Joines is an individual known to the defendant,
21 known to the defense and for that reason, it appears to me
22 that the reference to Mr. Joines is not subject to exclusion
23 under the death penalty statute and the language that I have
24 cited to.

25 With respect to those two subject matters, I will

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6327

1 permit Agent Manson to testify as to her conversations with
2 Mr. Joines, but not her conversations as to Mr. Joseph.

3 Try to be back at 12:45.

4 MR. MINISH: Also Mr. Dock, Judge? Mr. Dock falls
5 under Mr. Joines' ruling?

6 THE COURT: Yes, Mr. Dock has been throughout this
7 record and she may testify as to her statements with Mr. Dock.

8 MR. HERMAN: Judge, I have something to put on the
9 record. I can do it after lunch.

10 THE COURT: What's that?

11 MR. HERMAN: It doesn't seem to me -- the Government
12 is proffering this testimony to substantiate their obstruction
13 of justice. Now, this might be general obstruction of
14 justice, but the way we have been noticed on the aggravating
15 factor is the motive for the murder was to eliminate the
16 principle witness against the defendant in the federal

17 narcotics conspiracy charge pending against the defendant and
18 an additional motive was to retaliate against Kemo DeShawn
19 McCray.

20 THE COURT: What are you reading from?

21 MR. HERMAN: On June 19, 2006.

22 THE COURT: I'm simply asking you what is the
23 document you're reading?

24 MR. HERMAN: Notice of attempt to seek the death
25 penalty.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N.J.

6328

1 THE COURT: Okay. I have it.

2 Your point is that the obstruction of justice that
3 they've given notice of in the case is limited to the
4 obstruction of justice via the murder of Mr. McCray?

5 MR. HERMAN: Exactly.

6 THE COURT: Not general obstruction of witnesses
7 willy-nilly threatening witnesses and witnesses being in fear
8 of their lives?

9 MR. HERMAN: Thank you.

10 THE COURT: I have to tell you, I did not take that
11 into account.

12 MR. MINISH: We can respond to that.

13 Again, we're not talking about -- defense counsel
14 keeps trying to characterize this as the defendant making
15 specific threats to other witnesses. That's not what we're
16 talking about.

17 We are talking about the effects that the murder of
18 Kemo DeShawn McCray had, beginning and end.

19 We're not saying in any way, shape or form, that
20 William Baskerville went to Joines or to Dock, Joseph, all
21 it's irrelevant at this point and said, hey, listen, don't
22 testify. It's the exact thing that the defendant was charged
23 with.

24 THE COURT: I understand that.

25 The argument Mr. Herman makes is that the notice of

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6329

1 intention to seek the death penalty on obstruction of justice
2 as an aggravating factor talks about eliminating the principle
3 witness against the defendant in the drug case. Your argument
4 that it was the effect of that would be to have had a chilling
5 affect on the ability of other witnesses to testify about the
6 murder.

7 MR. MINISH: Correct.

8 THE COURT: I want you to think about whether the
9 point made is well taken here. Think about that.

10 I, frankly, didn't consider that, Mr. Herman.

11 MR. HERMAN: Thank you.

12 THE COURT: I'm going to reconsider this.

13 THE CLERK: All rise.

14 (Luncheon recess.)

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JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6330

1 AFTERNOON SESSION.

2 THE CLERK: All rise.

3 (The following takes place out of the presence of the
4 jury.)

5 THE COURT: I have taken the lunch break to review
6 the notice of Intent to Seek the Death Penalty and taking into
7 account Mr. Herman's argument with respect to the obstruction
8 of justice notice.

9 He makes a good point that if it were limited to the
10 obstruction of justice argument that the testimony of Agent
11 Manson as to statements about people who were intimidated
12 due to the -- due to their circumstances in connection with
13 the murder of McCray, I can follow the argument, but the
14 notice of intention also speaks in terms of future
15 dangerousness, where it specifically says, "Given the nature
16 of the charges, it is likely that the defendant will attempt
17 to retaliate against any individuals who cooperate with the
18 Government in connection with the murder charges."

19 Now, it would seem to me that that is the intent,
20 that is the intent that Agent Manson's testimony would purport
21 to service, so having reconsidered this, the ruling remains
22 the same.

23 I'm going to permit her to testify as to the
24 statements of Horatio Joines and Eric Dock, but not Mark
25 Joseph.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6331

1 MR. HERMAN: If I can just be heard?

2 I don't think Joines, as far as I know, was a witness
3 with regard to the murder. I think he was a witness with
4 regard to the drug charges; that that's my understanding and
5 the plea that he supposedly was going to put through was going
6 to implicate William Baskerville in a drug conspiracy.

7 I don't know if Joines knows anything, was ever asked
8 anything about the murder. I think his purpose was solely the
9 drug charges.

10 THE COURT: Do you know?

11 MR. MINISH: I do know. He did have information
12 about the murder.

13 Judge --

14 THE COURT: What, are you going to call the victim
15 impact witnesses?

16 MR. MINISH: Correct.

17 THE COURT: Let's get those people here. If we need
18 to put Manson on for a brief proffer, we can do it.

19 MR. MINISH: I would like to put something on the
20 record that would obviate the need.

21 I went back and read the statute that controls the
22 notice. The statute simply --

23 THE COURT: What's the statute?

24 MR. MINISH: 3593(a)(2).

25 DNJ 03-836 Vol 11
THE COURT: Okay.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6332

1 MR. MINISH: All it requires very clearly is setting
2 forth the aggravating factors or factors that the Government,
3 if the defendant is convicted, proposes to prove as justifying
4 a sentence of death. Literally, if we had just listed
5 obstruction of justice and the other things, there would be no
6 further requirements so I think by giving some information, to
7 require more, sort of puts this on its heads.

8 THE COURT: I understand, but nevertheless, I'll
9 think about it some more. I'm keeping out the references to
10 Mr. Joseph for the reasons that I've stated.

11 My inclination is to permit the testimony about
12 Joines and Dock.

13 MR. MINISH: The only favor the Government would ask
14 is that if Agent Manson is only going to be in for a short
15 proffer and then the victims and she wound up testifying
16 today, she can provide whatever information.

17 THE COURT: Whatever you want to do. If she's a
18 short witness, let's get it.

19 MR. MINISH: If there was proffered information,
20 we're assuming she'll be on tomorrow.

21 THE COURT: Why tomorrow?

22 MR. MINISH: Well, I guess it depends on how late the
23 Court will go.

24 THE COURT: We have two hours.

25 MR. MINISH: Okay. She'll stay.

6333

1 We can call Agent Manson if you made a final ruling
2 on that.

3 THE COURT: That's the way I'm inclined to rule.

4 MR. HERMAN: Well, Judge, I think we need a proffer
5 from Agent Manson with regard to whether Joines was a witness
6 on the murder case or only on the drug case.

7 THE COURT: Okay, if you want that.

8 Is she here? Get Agent Manson.

9 Let's get the jury and put the other witnesses on.

10 MR. HERMAN: I think with regards to the other
11 witnesses, the Government should caution them not to be
12 excessively emotional as we will do with our witnesses.

13 MR. FRAZER: Does that apply to the videotape as
14 well, Judge?

15 I have a motion as to that.

16 THE COURT: Excuse me. Let's -- we've avoided --

17 MR. FRAZER: It's somewhat disingenuous to ask that
18 at this time.

19 THE COURT: Let's have the witnesses testify. I'm
20 assuming they know how to behave themselves. If they don't, I
21 have the ability to control them.

22 Let's get the jury and the alternates.

23

24

25

6334

1 THE CLERK: All rise.

2 (The following takes place in the presence of the
3 jury.)

4 THE COURT: Have a seat, folks.

5 Take your seats.

6 You may call a witness.

7 MR. FRAZER: The Government calls Johnnie Davis.

8 J O H N N I E D A V I S, previously sworn, resumes
9 the stand.

10 THE COURT: Good afternoon, sir.

11 Mr. Davis has been previously sworn.

12 MR. FRAZER: Please have a seat, sir.

13 DIRECT EXAMINATION BY MR. FRAZER:

14 Q Try to stay close to the microphone, okay.

15 A Okay.

16 Q How are you, sir?

17 A I'm blessed.

18 Q Mr. Davis, you testified in the guilt phase of this case,
19 right?

20 A Yes, I did.

21 Q And you recall for the jury where you were on March 2nd,
22 2004?

23 A Yes.

24 Q Tell us again, where were you on that day?

25 A On 2004, I was on the corner of -- we was coming down

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6335

1 South Orange Avenue and 19th Street.
Page 105

2 Q Now, you've already recounted, you were with your -- with
3 Kemo McCray at that time?

4 A Yes, I was.

5 Q All right.

6 You actually were a witness to his death?

7 A Yes, I was.

8 Q I'm not going to go through that again with you. You've
9 testified and the jury can consider that.

10 What I want to ask you, sir, is from that day forward,
11 tell the jury how that day has affected you.

12 A Well, made me realize, keep track of my children which is
13 important.

14 It also made me realize that you don't trust no one,
15 especially in Newark, New Jersey.

16 Cause any time something like that can happen, with you
17 at two o'clock in the afternoon, in broad daylight, that's a
18 problem.

19 Now, I don't know the defendant, I don't know his
20 family, I don't know nothing about him, but I do know this
21 here. No one, no one is allowed to do that at two o'clock in
22 the afternoon in broad daylight.

23 Q Sir, let me ask you, tell the jury how long have you
24 known Kemo DeShawn McCray?

25 A I knew Kemo ever since the year 1972, when I met his

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6336

1 mother.

2 Q And how old was Kemo in 1972?

3 A He was born, just born.

4 Q So you've known him since he was a baby?

5 A Yes.

6 Q Explain to the jury what your relationship was like with
7 Kemo.

8 A Well, me and Kemo had bond as he grew. You know, he was
9 a good kid at one point. I don't know what happened as the
10 years went by, cause I left the family to pursue work
11 purposes.

12 Q When did you leave the family, about?

13 A I left back in 1986 to be exact.

14 Q And did there come a time that you came back into Kemo's
15 life?

16 A Yes, I did.

17 Q About when was that?

18 A That was prior to, let's see, back in '90.

19 Q I'm sorry?

20 A In 1990.

21 Q So you left for a period of years and then you were back
22 with Kemo's family?

23 A No, I was just in his life.

24 Q In his life?

25 A Yes.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6337

1 Q So you maintained a relationship with him?

2 A Yes, I did.

3 Q Tell the jury what did you consider Kemo?

4 A Well, when Kemo decided that he wanted to stop doing what
5 he was doing and he asked me to teach him my trade, which is

6 building houses --

7 Q We'll get to that in a second.

8 My question, though, sir, was: What were you to him?

9 A Oh, I was more like a father.

10 Q Okay.

11 Did he have a father?

12 A Yes, his father is deceased.

13 Q Do you know if he had any contact with his real father,
14 prior to him being deceased?

15 A I don't know that.

16 Q So what types of things would you do with him, with Kemo?

17 A Well, we went to amusement parks together and we did a
18 lot of things such as we would go out, you know. We did a lot
19 of fun things.

20 Q Okay.

21 What did he like to do?

22 A He liked the amusements parks, loved the clubs, loved
23 listening to his rap music. He was more like a fun guy.

24 Q Now, you said you were aware that he had gotten into some
25 trouble?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6338

1 A Yes.

2 Q All right.

3 Were you -- did he talk to you about that at all?

4 A Yes, he did.

5 Q Okay.

6 And did you advise him at all?

7 A I advised him, I said to him, I said, look, if you

8 started something, then you finish it, but keep in mind the
9 consequences behind it, okay.

10 Q Did you -- were you aware, sir, prior, in the year prior
11 to his death, that he had been working for the F.B.I.?

12 A No, I was not aware of all that.

13 Q Did there come a point when you became aware that there
14 was something going on?

15 A Yes.

16 Q Tell the jury about that.

17 A Well, the night before his death, we had a sit down and
18 we talked. He explained to me, he said, daddy, I did
19 something wrong.

20 I said, what was that, son?

21 He said, I told on the wrong people and they're going
22 to kill me.

23 Q You have to keep your voice up.

24 A I said, okay. I said, what do you want to do? I did
25 make an attempt to have him removed from Essex County. As a

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N.J.

6339

1 matter of fact, he was going to be removed that day before he
2 got killed. The same day, I'm sorry, the same day. But he
3 wanted to go to work with me that day.

4 Q Now, explain to the jury how did he become involved with
5 working on the house that you --

6 A He came to me and he asked me, and said, daddy, I want
7 you to teach me how to do floors and walls, cause he kind of
8 liked it, what I was doing.

9 I said, okay, I will show you.

10 Q Now, when was that? When did he start becoming
11 interested in construction?

12 A A week prior to his death.

13 Q Okay.

14 How did that come about?

15 A Well, Uncle Johnny told him.

16 Q Who's Uncle Johnny?

17 A A friend of his. They call him Uncle Johnny. Anyway, he
18 told him --

19 MR. HERMAN: Objection, Judge, hearsay.

20 MR. FRAZER: Hearsay is permissible.

21 THE COURT: Overruled.

22 Q Continue.

23 A Okay. Uncle Johnny said to him, he said, well, I have a
24 job I want you to do, working on a house.

25 He said, we'll call my step-father because he has all

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6340

1 the tools anyway, give him the job and I'll just work beside
2 him.

3 Q So Kemo thought of coming to you?

4 A Yes, he did.

5 Q And you had a background, you had some business in
6 construction?

7 A Yes.

8 Q How long have you been doing that?

9 A Well, I worked for Molten Construction out in Rumson, New
10 Jersey.

11 Q So you had been doing that type of work?

12 A I had been doing that work all my life.

13 Q So when Kemo came to you, tell the jury what happened.

14 A When he came to me and asked me about doing construction,

15 I laid it out for him what we had to do. We had to gut the

16 house and redo the house. So we started gutting the house.

17 That's when his death came about.

18 Q Now, to that day, March 2nd, were you teaching him how to

19 do that type of work?

20 A Yes, I was.

21 Q Tell the jury what Kemo wanted to do specifically in that

22 construction business.

23 A Well, he chose plumbing, dealing with pipes. That's what

24 he wanted to do. He wanted to be a plumber.

25 Q Now, were you able to teach him some of that?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6341

1 A Yes, I was able to teach him some of those.

2 Q Was he interested in that type of work?

3 A Yes, he was.

4 Q Did he tell you what his future goals were, what he

5 wanted to do with that?

6 A Well, he said he wanted to -- his future was to build his

7 house, to build a house for him and his family.

8 Q He told you that?

9 A Yes, he did.

10 Q You said that the night before he was killed, which I

11 assume you mean March 1st of 2004?

12 A Yes.

13 Q He came to you and told you something about his

14 involvement in what he was doing with the F.B.I.?

15 A Yes.

16 Q Just tell us what that was.

17 A He said he was working with the Government to bring down
18 the drug organization.

19 I said, okay. I said, but do you understand what
20 you're doing? I said, cause you must understand something, we
21 live by code, so you have to understand what you're doing.

22 Q What did he say?

23 A He said, pop, I fully understand what I'm doing. So then
24 I took it for face value that you had knowledge of what you
25 was doing.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6342

1 Q Did he seem upset or fearful in any way?

2 A Oh, yes. He was definitely in fear for his life.

3 Q Did he express that to you in words?

4 A Yes, he did.

5 Q What did he say?

6 A He said to me, he said, pop, I don't think I'm going to
7 make it. He said, because they be looking for me.

8 I said, Kemo, I can get you out tonight, providing that
9 you leave.

10 Q Now, had he thought about leaving?

11 MR. HERMAN: Objection to what he thought.

12 THE COURT: Sustained.

13 Q Did he tell you whether he thought about leaving?

14 A Yes, he did.

15 Q And what was it, what kept him from leaving?

16 A Well, prior to he had no money, his girlfriend. He
17 wanted her to go with him and I don't know whether or not she
18 was ready so I can't speak about that.

19 Q Did you have any contact with Kemo's children?

20 A Yes, I do.

21 Q Let's talk about his natural child.

22 A Jasmine.

23 Q Jasmine?

24 A Yes.

25 Q How old is Jasmine?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6343

1 A Jasmine is now 11, nine.

2 Q Okay.

3 And does he have other stepchildren as well?

4 A Yes. Nonna.

5 Q Nonna?

6 A Nonna, Ni asine.

7 Q Ni asine?

8 A Yeah.

9 Q That's not his own child?

10 A That's not his own child. That's his step child. Then
11 he has Koran.

12 Q How would you describe the relationship between Kemo and
13 his family and his children?

14 A Oh, his children, he loved them. He loved them. I think
15 the boy would do anything for his children.

16 Q Did he have siblings?

17 A Yes, he did.

- 18 Q Who were they?
19 A You're speaking of his kids, right? No.
20 Q Brothers and sisters?
21 A Oh, yes. There was Miss Niesha, Miss Iesha, Miss Anna
22 Davis and you have Laki esha.
23 Q So he had several sisters?
24 A Yes.
25 Q Did he have a brother?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6344

- 1 A Yes, Craig.
2 Q Is Craig deceased?
3 A Yes, he is.
4 Q Was he close with his siblings, his brothers and sisters?
5 A Yes, he was.
6 Q Sir, as you sit here today, what has the loss of Kemo
7 meant to you?
8 A Well, it means a lot because each day I have to look at
9 my grandkids in the face and I have to explain to them what
10 happened to daddy.
11 I remember his -- the day of his death and we didn't
12 tell Nonna cause Nonna was the last child that he had spoken
13 with that morning and kissed him before he went to work.
14 We didn't tell Nonna until afterwards. Then Nonna
15 broke down and he was in tears. That hurt, you know, because
16 for a kid to die that young and he had little kids that looked
17 up to him, that really hurt, you know. Each day I have to
18 look at my grandkids' face and I have to explain to tell them
19 why and how their father died.

20 MR. FRAZER: Thank you.
21 No further questions.
22 THE COURT: Any questions?
23 MR. HERMAN: No.
24 THE COURT: Thank you, Mr. Davis.
25 You're excused.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6345

1 THE WITNESS: Thank you.
2 THE COURT: Mr. Frazer.
3 MR. FRAZER: Yes, the Government calls Laki esha
4 Wilson.
5 L A K I E S H A W I L S O N, sworn.
6 THE CLERK: State your name for the record and spell
7 it.
8 THE WITNESS: Laki esha Wilson, L-a-k-i-e-s-h-a,
9 W-i-l-s-o-n.
10 DIRECT EXAMINATION BY MR. FRAZER:
11 Q Please have a seat, ma'am. Move up and put the
12 microphone right in front of you.
13 Good afternoon, Miss Wilson.
14 A How you doing?
15 Q Tell the jury how you knew Kemo DeShawn McCray?
16 A Kemo DeShawn McCray was my fiancée. I met him through
17 his sister.
18 Q You have to keep your voice way up.
19 A I had met him through his sister.
20 Q When did you first meet Kemo?
21 A When I was 17.

Page 115

22 Q What year was that about?

23 A '97.

24 Q 1997?

25 A Yes.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6346

1 Q Keep your voice way up.

2 So you said his sister introduced you?

3 A Yes.

4 Q Were you friendly with his sister?

5 A Yes, that's like my step sister because her father deals
6 with my mother, but they never got married. I still had call
7 her sister.

8 Q What's her name?

9 A Niesha.

10 Q She's also here today, right?

11 A Yes.

12 Q So Niesha introduced you to her brother?

13 A Yes.

14 Q And you've known him since 1997?

15 A Yes.

16 Q All right.

17 When did you first start dating?

18 A In 2000, in the year 2000.

19 Q You really have to talk as loud as you can.

20 A I'm trying.

21 Q You're nervous, right?

22 Have you ever testified before?

23 A No.

24 Q In 2000, did you -- do you have any children, ma'am?
25 A Yes.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6347

1 Q Who is your child?
2 A My son name is Koran Cooper.
3 Q Koran?
4 A Yes.
5 Q How old is Koran?
6 A He's eight.
7 Q At some point at the beginning of your relationship with
8 Kemo, did you actually live together?
9 A Yes, we did. We lived together for four years.
10 Q Until his death?
11 A Yes.
12 Q Tell -- where was that that you lived?
13 A In Bradley Court.
14 Q Where is Bradley Court?
15 A In Newark, New Jersey, North Munn Avenue in Newark, New
16 Jersey.
17 Q M-u-n-n?
18 A Yes.
19 Q And describe Kemo's relationship with your son.
20 A Well, Kemo relationship with my son since his father was
21 never really there, he was like a father to my child.
22 Q What types of things would Kemo do with your son?
23 A We would go to the amusement parks together, we had snow
24 ball fights. He'd take him out, go to the movies, you know,
25 he was there.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6348

1 My son looked up to him as his own father.

2 Q How would you describe Kemo as a father?

3 A Kemo being a father, he's very good at it. Like it was
4 certain times that my son would listen to me, but he would
5 listen to him because he had like a more, how do you say it?
6 A stronger version of planning the father because I couldn't
7 do both. He was very good as a father, to my child and to his
8 kids as well.

9 Q So he would keep them in line?

10 A Yes, he did.

11 Q At some point you said that you had plans to marry Kemo?

12 A Yes, I did.

13 Q And when did that come about?

14 A Well, we was supposed to get married on my birthday,
15 which was October 1st. So we was engaged for two years before
16 prior to what happened to him. We was supposed to get married
17 on my birthday.

18 Q Now, did he just prior -- the marriage was then scheduled
19 for approximately seven months after he had passed?

20 A Yes.

21 Q Did he confide in you in what he had been doing with the
22 F.B.I. in the year prior to his death?

23 A No, he did not. He didn't tell me anything.

24 Q When you found out -- did you find out after his death?

25 A Yes, I did.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.
Page 118

1 Q What reaction -- did that surprise you?

2 A Yes, it did. I was really devastated because he's not
3 that type of person at all to be involved with anything of
4 that nature.

5 Q Okay.

6 When you mean that nature, you mean drugs?

7 A Exactly.

8 Q Now, you were aware, though, that he had gotten into some
9 trouble with the law at some point?

10 A Yes, I was aware of that.

11 Q Tell the jury what the impact of Kemo's death had on your
12 son, Koran.

13 A My son Koran, he doesn't like fully understand that once
14 you're gone, there is no coming back. And he really started
15 struggling in school as far as him doing what he need to do in
16 school. He started falling off and --

17 Q Had he been a good student?

18 A Before, yes.

19 Q How old is Koran?

20 A He's eight now.

21 Q What grade is he in?

22 A He's in the second.

23 Q Did you -- did he ask questions about Kemo?

24 A Yes, he did. Every time the doorbell would ring or,
25 every time the doorbell ring or the phone would ring, he

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

1 always asked was that Kemo, is he coming back?

2 I try to explain to him that he's in heaven now, but he
3 don't understand. He's been having a hard time as well as I
4 have. Everyday I talk to him, I let him know, my babies here.

5 Q Are you still close with Kemo's family?

6 A Yes, I am.

7 Q Do you know his mother?

8 A Yes, I do.

9 Q And are you still close with his sisters?

10 A Yes, I am.

11 Q Thank you.

12 MR. FRAZER: I have no further questions.

13 THE COURT: Any questions?

14 MR. HERMAN: No.

15 THE COURT: Thank you, very much, Miss Wilson.
16 You're excused.

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JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6351

1 MR. FRAZER: Government would call Niesha McCray.

DNJ 03-836 Vol II
2 N I E S H A M C C R A Y, sworn.
3 THE WITNESS: Niesha McCray, M-c-c-r-a-y.
4 DIRECT EXAMINATION BY MR. FRAZER:
5 Q Good afternoon, Miss McCray.
6 A Good afternoon.
7 Q How old are you?
8 A Twenty-five.
9 THE COURT: You have to keep your voice up. Speak
10 into the microphone.
11 A Okay.
12 Q Keep your voice way up.
13 A All right.
14 Q You're 25 years old.
15 Where do you work?
16 A Right now I own my own business.
17 Q What type of business?
18 A A cleaning business, Sister and Sisters Cleaning Business
19 and I work for Palmer's Cocoa Butter Factory.
20 Q We cannot hear you.
21 A I work for Palmer's Cocoa Butter Factory.
22 Q So you work for the Palmer's factory?
23 A Cocoa Butter Factory, yes.
24 Q Where is that?
25 A That's in Pennsylvania.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6352

1 Q And you also have your own business?
2 A Yes.
3 Q How long have you had your own business?

- 4 A Two years.
- 5 Q Do you have children?
- 6 A Yes.
- 7 Q How many children?
- 8 A I have three that's originally mine and two that I
- 9 adopted.
- 10 Q Tell the jury who Kemo McCray was to you.
- 11 A My brother.
- 12 Q He's your?
- 13 A First he was my father and my brother. He raised me.
- 14 Q Explain to the jury how that came about.
- 15 A I was a trouble teen, I was bad, so my mom couldn't
- 16 control me. So I got to live with my brother that raised me
- 17 until I was 16.
- 18 Q Let me stop you.
- 19 At some point you said you got in trouble?
- 20 A Yes.
- 21 Q With the law?
- 22 A No, I just was bad, done teenage things.
- 23 Q How old were you when you went to live with your brother?
- 24 A Twelve.
- 25 Q And how old was your brother at that time, how much older

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6353

- 1 was he than you?
- 2 A Well, I believe he's like seven years older than me.
- 3 Q Okay.
- 4 So at some point your mother sent you to live with
- 5 Kemo?

6 A Yes.

7 Q You lived with Kemo from the age of 12 to what?

8 A Sixteen.

9 Q So describe for the jury, you said he was like a father
10 to you?

11 A Yes.

12 Q Tell the jury about that.

13 A I didn't have no father with me.

14 Q You have to keep your voice up.

15 A I knew who my father was, but I just didn't have him
16 with me. I never lived in the household.

17 Put it like this, when I became a young woman for the
18 first time, I didn't go to my mother, I went to my brother,
19 that's how much closer I was with my brother than anybody
20 else.

21 My father wasn't there so everything that I had to deal
22 with a man, went towards him instead of anyone.

23 Q Let me ask you, Miss McCray, you said you had been in a
24 lot of teenage trouble?

25 A Yes.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6354

1 Q How did living with Kemo impact that?

2 A Cause he, for instance, my business. He always talked to
3 me about being stupid and trying to follow behind other people
4 and to learn how to take my own route than do what everybody
5 else do.

6 So it took at least a year and a half before I actually
7 grasped what he was saying and to getting in more and more

8 trouble, realize it wasn't my trouble, but the trouble to my
9 friends.

10 So one day he sat me down and he's telling me that my
11 mom, she at the time was upset with me about this stuff I was
12 getting into, so I was hurt because I couldn't be around more
13 than five minutes without her yelling at me. He told me you
14 got to understand why. She hurt that you are being so stupid
15 and embarrassing her the way you are.

16 So I thought about it and he told me that even though
17 he would never be embarrassed or feel something toward me, she
18 does and I just didn't want my brother or my mother to feel
19 that way.

20 Q So he was trying to help you through your relationship
21 with your mother?

22 A Yes.

23 Q Would he discipline you or yell at you?

24 A Yeah.

25 Q Tell us about that.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6355

1 A Okay. If -- one time he used to pick me up from school.
2 I wasn't allowed to go to school and come home by myself, he
3 had to take me and pick me up. Embarrassing.

4 So one day I tried to sneak out of school back door and
5 he caught me and I ended up in a garbage can. Then I went
6 home, I was on punishment. Everywhere he went, I had to
7 follow him. It was horrible.

8 Q But ultimately as you got older --

9 A As I got older.

10 Q How did that type of influence, how did that influence
11 you?

12 A As I got older, I got his trust, he started trusting me
13 again. So I had got my first job.

14 The first month of the job he would take me to work,
15 pick me up from work, but then as it got deeper into my job,
16 he trusted me more where I can go home, go to work by myself
17 and he knew that I was doing what I was supposed to be doing.

18 Q Let's talk about your family.

19 Your other sisters, who are they?

20 A Iesha McCray, Anna McCray.

21 Q Did he -- was his relationship with his other sisters
22 similar to yours?

23 A Somewhat.

24 I just was always under him, that's why.

25 Q You were kind of under his wing?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6356

1 A Yeah.

2 Q But was he close with his other sisters as well?

3 A Yes.

4 Q Tell the jury about Kemo's children.

5 A Jasmine.

6 Q How old is Jasmine?

7 A She's nine.

8 Q Okay.

9 And was that Kemo's natural child?

10 A Yes.

11 Q And did he have other children?

- 12 A Yes.
- 13 Q That he considered his own?
- 14 A He was with a girl when she was two months pregnant, he
- 15 met her and she had a son, Niasine and he raised that boy.
- 16 Q Is he also known as Nonna?
- 17 A Nonna, yes. He raised him until the age he was.
- 18 Q And was there any other child in his life?
- 19 A Koran. He was his fiancée's son. He was with her, he
- 20 was a year old and he raised him.
- 21 Q Let's talk about Kemo when he was growing up.
- 22 Who was he raised by?
- 23 A Grandmom and my mom.
- 24 Q Your grandmother and your mother?
- 25 A Yes.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6357

- 1 Q What was his relationship like with his grandmother?
- 2 A He was very close to my grandmother. That was -- he
- 3 basically looked at my grandmother as his mother. He was very
- 4 close with her.
- 5 When she passed, it was hard on him more than it was
- 6 for the other kids.
- 7 Q Tell us what types of things you would do with Kemo, what
- 8 he enjoyed doing?
- 9 A Well, we used to go to the movies together, we ride
- 10 around, hang out at the house, play games, go to the amusement
- 11 parks. He loved amusement parks.
- 12 Q Would he take his kids to the amusement parks?
- 13 A Yes.

- 14 Q I'm going to show you Government exhibit P-52.
- 15 MR. FRAZER: If there is no objection, I'll move it
- 16 in.
- 17 MR. HERMAN: No objection.
- 18 (P-52, photo, is marked in evidence.)
- 19 Q Do you recognize that photo, who's in that?
- 20 A Yes.
- 21 Q Can you tell us who's in that photo?
- 22 A Jasmine.
- 23 Q That's not Kemo in the Sponge Bob?
- 24 A No.
- 25 Q But that was taken at an amusement park?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6358

- 1 A Yes.
- 2 Q I want to show this. That's Jasmine, Jasmine?
- 3 A Jasmine.
- 4 Q And who's that?
- 5 A Niasine.
- 6 Q Or Nonna?
- 7 A Right.
- 8 Q Okay.
- 9 That was taken several years ago?
- 10 A Yes, not too long ago.
- 11 Q Let me show you another picture, which is P-50.
- 12 MR. HERMAN: No objection if it goes into evidence.
- 13 (P-50, photo, is marked in evidence.)
- 14 Q I don't know if you can see that from where you are.
- 15 Can you see that?

16 A Yes.

17 Q It might be on the screen in front of you also.

18 Tell the jury the story behind that picture.

19 A That was when I was living with him. I was living with
20 him when I was 15. That's when the picture was taken.

21 Q And what is it about that picture that you remember?

22 A Because he was mad at me about something, I was joking
23 around with him.

24 Q Keep your voice up.

25 A He was mad at me about something and me and his daughter

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6359

1 Jasmine's mom was joking around with him, snapping pictures
2 and he don't like pictures.

3 So he told us if we took the picture, he was going to
4 hit us with the weights, so we snapped the pictures and then
5 we ran in the back.

6 Q Did he like to lift weights?

7 A Yes.

8 Q You mentioned that he liked to go to amusement parks.
9 You told me something about him cooking.

10 Can you tell the jury about that?

11 A He can cook a little bit. But all I remember eating when
12 I live with him was eggs and chicken and that's all he cooked
13 for me.

14 He cooked eggs chicken and noodles of oodles. We ate
15 that all the time, unless we go out to eat.

16 Q Now, tell the jury he had a pet?

17 A Kato.

18 Q What's the name?

19 A Kato.

20 Q Kato?

21 A Yes.

22 Q Tell the jury about Kato.

23 A He always wanted a son, never had a son, so he had a dog
24 that he had bought out of the newspaper. It was I think it
25 was a Pit Bull, and he named him Kato.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6360

1 One day Kato got killed, so he was going crazy with
2 this dog. So we went to the amusement park and he won me a
3 teddy bear that was almost my size and he named it teddy bear
4 Kato because it looked just like the dog.

5 Q Okay.

6 Let's talk about Jasmine and Nonna and Koran.

7 Can you tell the jury as far as Jasmine, what impact
8 Kemo's death has had on her?

9 A Well, Jasmine, I can't really -- she's, right now she's
10 in counseling because she went to a depression mood because
11 okay, the weekend that he passed, he was supposed to pick her
12 up and he didn't come that weekend, but she just thought he
13 just didn't come that weekend.

14 Q Keep your voice up.

15 A So she keeps saying if he would have picked her up, he
16 would have still be alive. If he would have came early, she
17 didn't know he was at work, that's the reason he didn't show
18 up at the time.

19 Right now she's in therapy because she gained weight

20 afterwards and she -- it's kind of hard for me to explain
 21 because I can't really explain to her to help her, so I just
 22 try to talk to her sometimes and let her know that he loves
 23 her, regardless, I'm here, grandma's here, aunts, cousins are
 24 still here, but I told her that dad is here, but she just --
 25 when I went over her house Friday, I went over her house.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6361

1 I gave her pictures of him because she didn't have any
 2 pictures. So we got pictures, I gave her a picture and I'm
 3 looking around the house for the picture to find out that she
 4 stuck the picture in the back of her closet because she says
 5 so long as the picture is up in the house, she feel things are
 6 happening to her, things are falling, so she going through
 7 therapy right now. She's messed up right now.

8 Q The stuffed animal you mentioned, tell us what happened.

9 A Well, I know she didn't want the picture because she was
 10 saying she was scared to have the picture in the house, so my
 11 brother before he passed, six months before he passed he was
 12 living with me.

13 So he had left Kato, the teddy bear, he left the teddy
 14 bear at my house. So I just gave her the teddy bear and I was
 15 looking for the teddy bear at her house. No teddy bear is
 16 nowhere to be found. She stuffed that away. She does not
 17 want anything, she's scared.

18 Q You told me about -- I don't know if you were able to
 19 find it, about a letter that you had had from Kemo?

20 A Yes.

21 Q He had written to someone?

22 A Yes.

23 Q Who did he write the letter to?

24 A He wrote it to Jasmine, to his daughter.

25 Q Tell us the circumstances.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6362

1 A I don't know where the letter was written, I don't know,
2 but I do know she never received it. When he passed, Laki esha
3 found the letter and I went and got all his items from the
4 house and I read the letter.

5 I misplaced the letter and I wanted to give it to her
6 but the letter was pertaining to her, about how he was going
7 to try to change different things about his life for her, like
8 as far as him and her relationship. He wanted to make it
9 stronger, get closer than what it was.

10 Q Nonna, tell the jury what the impact of Kemo's death was
11 on his stepson.

12 A Niasine, he was used to always being with him.

13 Q Describe that relationship.

14 A He was like his son. Basically he was his son. He was
15 his son.

16 Kemo had split up with Nonna mother at least a year
17 before he passed, but Nonna lived with Kemo. He took care of
18 Kemo -- Nonna everyday. Wherever he went, he had him.

19 In fact, the day he passed, he had just dropped Nonna
20 off to a baby-sitter so Nonna was with him everyday.

21 Right now they having problems with Nonna as far as
22 school. He not listening and stuff, you know. His mom can't
23 control him. He's not used to his mom controlling him, he's

24 used to Kemo controlling him so it's hard for her to try to
25 get him to listen to what she's saying. They're having

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6363

1 problems with him as far as that.

2 Q Your children, how old are they?

3 A My eldest is seven, six, two.

4 Q Did any of them really know Kemo, they were young when he
5 passed?

6 A They knew him and everything. My daughter remembered him
7 because he bought a chain. He used to call my daughter little
8 girlfriend. She was the first niece in my family. He used to
9 call my daughter little girlfriend and he bought her a chain.
10 They pretty much remember him.

11 Q Tell us -- you told me about their names.

12 A Well, my brother never had a son so me and my other
13 sister, we all decided that when we had kids, we were going to
14 name them after him, but he would never let us name his full
15 name, because he said he was going to have a son, so we
16 couldn't name them the full name.

17 My son, my seven-year-old, his name is DeShawn and my
18 11-year-old nephew name is DeShawn, then I had a baby after
19 Kemo passed, so we named him Kemo.

20 Q You were on one of the tapes that the jury heard?

21 A Yeah.

22 Q We talked about that. Something about a pizza?

23 A Yeah.

24 Q He was at your house that day?

25 A Yeah.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6364

1 Q Were you aware he was working for the F.B.I.?

2 A No.

3 Q There was a story about the pizza and something about a
4 wig.

5 Can you tell the jury what that was?

6 A I used to wear wigs. I used to wear a lot of different
7 color wigs and one day we were hanging out and he was saying
8 that we was going to order pizza.

9 So I used to try to walk around like I was all cute and
10 walking down the stairs to go pick the pizza and he ran up
11 behind me, with the pizza man and pulled my wig off. He used
12 to call me Rupaul.

13 Q Rupaul?

14 A Yeah, because of the wigs.

15 Q You said that you told me that you learned something from
16 him, stand on your own, never make a fool of yourself.

17 Can you tell the jury about that?

18 A Yes. Because before I had my first child, my brother
19 explained to me that if I'm having a child, that I must be
20 able to stand on my own and don't let no one make a fool of
21 you.

22 So before I had my son, I thought about it. He made me
23 think about it and I thought about it and we decided for me to
24 have my son and then I knew right before he passed, about a
25 month before he passed, he started working. He told us,

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

1 that's the only thing he told us, he was going to get a job
2 and he wanted us to come over, see him working and stuff. So
3 we started going over there.

4 Then we went over to a diner close by and he was
5 talking to me and he told me that if he could stand on his
6 own, don't let no one make a fool out of you, I can do it,
7 too.

8 So after my brother passed, that just stuck in my head
9 and the fact that he passed the week of my birthday, the day
10 after the funeral, I decided to move to Pennsylvania and stand
11 on my own.

12 Q So the week after he died on March 2nd, 2004, was your
13 birthday?

14 A My birthday was March 6.

15 Q And you left your home?

16 A I left the family -- the funeral was March 7. I left my
17 home March 8.

18 Q Why?

19 A There was nothing there for me. My brother was already
20 gone. My father is already gone. There was nobody left in
21 New Jersey for me to be there for.

22 Q Have you taken his advice, are you standing on your own?

23 A Yes, I am standing on my own. I own my own home, I got
24 my own business, I have my own kids, I'm taking care of
25 everything by myself.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

1 Q Thank you.

2 MR. FRAZER: No further questions.

3 THE COURT: Any questions?

4 MR. HERMAN: No, your Honor.

5 THE COURT: Thank you very much, Miss McCray, you're
6 excused.

7 Mr. Minish.

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JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6367

1 MR. MINISH: At this time the Government calls Agent
2 Shawn Manson to the stand.

3 S H A W N M A N S O , previously sworn, resumes the
4 stand.

5 THE COURT: Agent Manson is previously sworn.

6 DIRECT EXAMINATION BY MR. MINISH:

7 Q Good afternoon, Agent.

8 A Good afternoon.

9 Q I know and the jury does, that you testified for a couple
10 of days here previously. I want to narrow your testimony
11 today to a specific area, okay?

12 A Okay.

13 Q The area I'd like to ask you questions about is the
14 affect, if any, that the murder of Kemo DeShawn McCray had on
15 your investigation. Okay?

16 A Okay.

17 Q I'm going to direct your attention specifically to an
18 individual named Eric Dock.

19 A Okay.

20 Q Could you explain to the jury what, if any, affect the
21 murder had on Eric Dock?

22 A Eric Dock came forward on his own. He had written a
23 letter saying he had information regarding the death of a
24 federal informant.

25 After we received that letter, we spoke with Mr. Dock

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6368

1 and he told us that, in effect, Mr. Baskerville, William
2 Baskerville was responsible for having Kemo killed. And that
3 Eric Dock had several conversations with Mr. Baskerville about
4 these events.

5 He very much wanted to provide information to us but
6 was so concerned about doing so, because his family was still
7 out, they lived in the Newark surrounding area. He was very
8 concerned about his family and also his well-being.

9 He was incarcerated. But he said before I go into
10 great detail as to my conversations with William Baskerville,
11 I need you and the Government to tell me that my family will
12 be relocated to a place of safety, because I can't continue
13 telling you everything about this investigation unless I have
14 the peace of mind that my family will be protected, because I
15 know that William Baskerville had an informant killed. If he
16 did that to Kemo, he can do that to me.

17 If he can't reach me, then I know he'll reach out for
18 my family and try and harm them.

19 Q So after Mr. Dock provided that information to you, what
20 did you, in fact, do?

21 A Right then and there we did a conference call because
22 like I said, Eric Dock was incarcerated. We were at the U.S.
23 Attorney's Office and we were able to get his mother on the
24 phone. We did a conference call and we explained to her what
25 was going on.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N.J.

6369

1 He explained to her in his own words what was going on,
2 that he would like to cooperate with the Government in a case
3 that involved the murder of a federal informant.

4 He feels that it's best that his family relocate. She
5 is a working woman, she has -- he comes from a large extended
6 family. He said -- he asked her if she would be comfortable

7 relocating, leaving her job and relocating the family, meaning
8 her children and grandchildren that she was helping raise. So
9 we had a rather lengthy discussion and she said that he needs
10 to do the right thing and that the family would be willing to
11 relocate.

12 So within a matter of I'd like to say maybe two weeks,
13 we had the entire extended family relocated, meaning again,
14 Eric's brothers and sisters and their children and this meant
15 pulling children out of school. She left her job. She
16 brought her husband who was in a nursing home at the time and
17 they have all since been relocated.

18 Q Now, you told us a couple of things, but without telling
19 us where the relocation is, what's the actual process involved
20 in getting a relocation done?

21 A What I had to do is write a very detailed memo to my
22 supervisor, who passes it up the chain. Eventually it goes to
23 the head of our office.

24 What I have to put in that memo is reasons to believe
25 that this informant and this informant's family, meaning Eric

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6370

1 Dock and his family, are at risk.

2 I have to detail why I believe that to be the case and
3 what evidence do I have to substantiate that. So I wrote a
4 rather lengthy memo explaining what had already happened in
5 this investigation, that there's a federal informant who had
6 been killed at the hands of William Baskerville and his other
7 co-conspirators in this case.

8 If Eric Dock did, in fact, cooperate, we had very good
Page 138

9 reason to believe that he, himself, is in jeopardy as well as
10 his family. That's the first part. I have to show why there
11 is good reason to relocate this individual.

12 Then the second part of my memo is more a financial
13 review, what type of money will this family need to relocate,
14 what kind of moving expenses will they incur, what kind of
15 rent will they have to pay or what are there living
16 arrangements going to be and what do we have to provide to
17 them to help them relocate.

18 It's very detailed as far as rent, utilities,
19 grocery, things to help this family leave an area where they
20 have been born and raised and move to a whole new area to get
21 their feet on the ground.

22 After I've written this memo, it goes to my
23 supervisor, who has to approve it. It then goes to, as I
24 said, his boss, who is the boss of our office, and I also had
25 to get headquarters approval on this particular relocation

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6371

1 just because the dollar amount was rather high.

2 Q Now, how many people were actually ultimately moved, do
3 you remember?

4 A I believe there were nine of them.

5 Q And you said it was a significant amount of money.

6 What specifically did the money go to pay for?

7 A The money went to pay for, first of all, moving expenses,
8 moving truck, transportation to their new location and that's
9 transportation for nine individuals. Any sort of food that
10 they would need, lodging. The trip lasted many days, that's

11 the immediate cost.

12 Then long-term, we're able to pay two months' rent,
13 utilities, general living expenses, security deposits, items
14 of that nature.

15 Q What's the purpose of that two-month payment?

16 A The two months, that's not my own personal rule, that is
17 a rule that we're governed by when we move an informant or his
18 or her family, we're allowed to go out two months. That's a
19 rule made by headquarters. I don't know but that's as far as
20 we can go out.

21 Q That's to get them on their feet?

22 A Two months is what the Government feels should be
23 reasonable time for somebody when they're relocated to get
24 their feet on the ground, to find employment, to at least
25 sustain a home or an apartment and like you said, get their

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6372

1 feet on the ground. That's what it's for.

2 Q Now, once the move was completed, were there any issues?

3 A Oh, several issues. I speak to Eric Dock's mother
4 regularly, probably on a monthly basis.

5 MR. HERMAN: Objection, relevance.

6 THE COURT: Sustained.

7 Q Have you spoken to Eric Dock from the day of the move,
8 whenever that conference was?

9 A Yes.

10 Q About things that might affect his willingness to
11 testify?

12 A Yes, I have.

Page 140

13 Q Tell the jury about that specifically.

14 A He had grave concern because apparently he had heard that
15 a story aired on Court TV about this investigation.

16 THE COURT: Excuse me, Agent, please limit your
17 testimony to what he told you.

18 A He told me that the investigation aired on Court TV, and
19 I spoke to him about that, saying that it was highly unlikely
20 that it had because neither myself or members or the
21 Government had news of that.

22 But regardless, it was enough to make him very, very
23 nervous and he felt that not only his life was in jeopardy,
24 but his family's life was in jeopardy. So we had to get to
25 the bottom of that and we found out that the story did not, in

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6373

1 a fact, air on Court TV but that was enough to have him
2 extremely, extremely upset.

3 Q Whether or not he was actually upset, what affect, if
4 any, did he say that had on his willingness to testify?

5 A He said that if we can't protect him or his family, he
6 will not continue and testify for us. He just will not put
7 himself or his family in that position.

8 Q I want to direct your attention to a second individual.

9 A Okay.

10 Q Are you familiar with a man named Horatio Joines?

11 A Yes, I am.

12 Q Okay.

13 Did he go by any nicknames?

14 A Ray-Ray.

15 Q Again, first, was he ultimately arrested by you and your
16 group?

17 A Yes, he was.

18 Q And why was he arrested?

19 A On drug conspiracy charges.

20 Q Do you recall when he was arrested?

21 A I believe it was March of 2005.

22 Q Let me ask you this way: Was it after or before Kemo
23 DeShawn McCray was murdered?

24 A It was after Kemo was murdered.

25 Q What nicknames did he go by?

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6374

1 A Ray-Ray.

2 Q Now, what, if any, association did you believe during the
3 course of your investigation that was between this man,
4 Ray-Ray, Horatio Joines and defendant?

5 A I understood Ray-Ray and Will Baskerville to be partners
6 in the drug -- in their drug organization.

7 Q When he was arrested, where was he taken?

8 A At his home -- I'm sorry. We arrested him at his home
9 and he was taken to our office where we processed him, meaning
10 we fingerprinted him, we photographed him, we read him his
11 rights and gave him the opportunity to speak to us if he so
12 chose to do so.

13 Then he was taken to the Marshal's Service.

14 Q While he was in F.B.I. custody for processing, did you
15 have the opportunity to speak to him?

16 A Yes, we did. I did speak to him and he did provide us
Page 142

17 with a statement.

18 Q Okay.

19 And did you -- what did that statement include?

20 A The statement -- in the statement he advised that he
21 does, in fact, sell drugs. He sells coke and that he was with
22 William Baskerville on a lot of occasions where they would
23 make -- where William Baskerville would make drug
24 transactions, but that Ray-Ray said that he was just along for
25 the ride and that he would handle money and sometimes put it

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6375

1 in the glove box, but that was about the extent of his
2 involvement.

3 So he was --

4 Q I want to ask you a specific question.

5 Was he asked whether or not he had any information
6 about the murder of Kemo DeShawn McCray?

7 A Yes.

8 Q Okay.

9 Did he tell you whether or not he had that information?

10 A He said that he had information, but that he would not
11 provide that to us.

12 Q Why not?

13 A Out of fear for his life.

14 Q From who?

15 A From William Baskerville and William Baskerville's
16 associates. He said, you just don't mess with that family.

17 MR. MINISH: Nothing further, Judge.

18 THE COURT: Questions?

Page 143

19 MR. HERMAN: No questions, thank you.

20 THE COURT: Thank you, Agent.

21 You're excused.

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JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6376

1 MR. MINISH: Judge, that's the last witness we're
2 going to have. We have a bunch of documents to move.

3 THE COURT: Go ahead.

4 Are you folks ready to press on?

5 MR. MINISH: One more photo of Mr. McCray, P-51.

6 THE COURT: All right.

7 MR. HERMAN: No problem.

8 (P-51, photo, is marked in evidence.)

9 MR. MINISH: Judge, I'm going to hand out copies.

10 THE COURT: What is it you're showing the jury?

11 MR. MINISH: I'm showing the jury 15A.

12 MR. HERMAN: No objection if he wants to put it in.

13 MR. MINISH: And B, all of these things have been
14 provided to defense counsel.

15 MR. HERMAN: I have to know what they are.

16 THE COURT: What are they?

17 MR. MINISH: 15AA, one of a presentence report that
18 was done for the defendant and 15B is page two of the
19 presentence report.

20 (P-15A and B, presentence report, is marked in
Page 144

21 evidence).

22 THE COURT: Is that what's on the easel?

23 MR. MINISH: 15A is on the easel.

24 To make this a little smoother, I've shown all these
25 items to defense counsel, with the exception of the one item

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6377

1 before the jury sees it. These are all acceptable.

2 MR. HERMAN: Just put their numbers on the record.

3 MR. MINISH: 15A, 15B, P-30, P-31, P-33, P-35, P-37,
4 P-19, P-1, P-4, P-16, P-18, P-17, P-12, P-11 and P-15.

5 THE COURT: All right.

6 MR. HERMAN: I have to look at them, there were more.
7 P-1, no objection.

8 Are you offering P-3?

9 I have no objection to A and B; 30, no objection; 31,
10 no objection; 32, no objection, 33, no objection, 34, no
11 objection; 35, no objection; 37, no objection; P-19 I think is
12 in evidence, no objection; P-1, no objection; P-4, no
13 objection; P-16, no objection, it's been redacted; P-18, no
14 objection; P-17 has to be redacted, Judge, so I'll put that
15 aside; P-12, no objection; P-11, no objection; P-15, that has
16 been redacted, no objection.

17 (The above documents are marked in evidence.)

18 MR. MINISH: I understand the area that defense
19 counsel wants to redact on P-17, the Government agrees and
20 will not refer to this section.

21 THE COURT: These are in evidence, what are you
22 going to do?

23 MR. MINISH: Explain to the jury what each item is,
24 read certain portions from them.

25 THE COURT: All right.

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6378

1 MR. MINISH: Members of the jury, as you can see from
2 the hand out, the defendant's interaction with the criminal
3 justice started approximately January 18, 1985.

4 MR. HERMAN: It sounds like a summation.

5 THE COURT: Mr. Minish, don't make comment on it. If
6 you're going to read it, that's fine. If you want the jury to
7 read it, that's all right, but you'll have an opportunity to
8 make argument later on.

9 MR. MINISH: This before you now, 15A and 15B is an
10 adult presentence report, which is taken from one of the
11 defendant's presentence reports.

12 P-30, which is in evidence, speaks specifically to a
13 robbery, which is covered on 15A -- excuse me. Let me skip to
14 15B to make this easier.

15 15B is the second page of that report I spoke of.
16 The documents that are associated with that, that you will get
17 back in evidence are P-30, P-31, P-33, P-34, P-35, and P-37
18 and P -- excuse me, and P-19. All of those items are
19 associated with this top offense listed on 15B.

20 On page 30, I'm going to read to you a portion which
21 states that a leather bomber was taken with the value of \$125.

22 P-31, quoting from that language says, "Suspect was
23 questioned and admitted he shot and robbed the victim."

24 P-32, reading from there, "Above-named victim met at
Page 146

25 his home. He was being treated by wound to his left lower

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6379

1 back. The victim was approached by suspect who demanded the
2 victim's gray goose down coat with fur collar. When victim
3 resisted, the suspect produced a handgun and shot the victim
4 and took his coat. Suspect fled in an unknown direction."

5 Couple of lines from P-33, "Victim was one Ryan
6 Sanders, age 15, of 870 South 17th Street, city, who sustained
7 a gunshot wound of the back. Victim stated that he was shot
8 by a black youth he knows by the first name of Will. Victim
9 related Will approached him and his friend and demanded the
10 goose down jacket and he refused."

11 P-34 is a voluntary statement from Louis Gadsden, who
12 is a witness to the crime. He is asked, "Tell me what
13 happened" and states on P-34, "We were going to Ryan's house,
14 walking up the street. Will grabbed him and told him to give
15 up the coat. Ryan refused and they started to wrestle and
16 that's when he got shot."

17 He's asked, "Did Will take Ryan's jacket after he
18 shot him?"

19 He answered, "Yes."

20 He's asked, "Do you know if Will attends school?"

21 The answer is, "He goes to West Side sometimes."

22 Then there's a statement of the defendant, P-35.

23 I'll read a passage from there.

24 "QUESTION: On Wednesday, October 22, 1986, were you
25 involved in a robbery where you shot the victim?

1 "ANSWER: Yes.

2 "QUESTION: What was the location of the robbery?

3 "ANSWER: It was 17th Street right by Madison

4 Avenue.

5 "QUESTION: Were you alone at the time?

6 "ANSWER: Yes.

7 "Who was the person that you robbed and shot?

8 "ANSWER: All I know him by is Ryan.

9 "QUESTION: How long have you known Ryan?

10 "ANSWER: About two years, not it was before then
11 because his mother used to work at Madison school when I was
12 going there.

13 "QUESTION: What did you take from Ryan?

14 "ANSWER: A coat."

15 The coat is described.

16 "QUESTION: Tell me what happened.

17 "Ryan was coming off the porch and I grabbed him,
18 told him to take off the coat, we were tussling and the gun
19 went off. I yanked the coat off his arms and ran.

20 "Was Ryan alone at the time?

21 "No, he was with Louis.

22 "What type of gun did you use?

23 "It was a 32 black with short barrel.

24 "What did you do with the coat that you took from,"
25 it says, "Will?"

1 "I sold it for \$75.

2 "What happened to the pistol?

3 "I gave it back to who I got it from.

4 "Who did you get it from?

5 "This guy named John, I don't know his last name and
6 where he lives."

7 The last thing with respect to this charge is from
8 P-37, reading the defendant's statement. "Before it happened,
9 I was down the street. I saw the kid. This other other guy
10 that I was with advised me to rob him. These guys I was going
11 out robbing, these guys I was with was going out robbing. I
12 got the gun from one of them. I didn't mean to hurt him none,
13 I just wanted to scare him.

14 "I grabbed him, he started to tussel, the gun went
15 off. After it happened, I gave the gun back. They went and
16 did their thing. I sold the jacket to somebody for \$75."

17 From the victim's statement, "The undersigned officer
18 was contacted by Mrs. Sanders, the mother of the victim. She
19 indicated that her son has been profoundly affected by the
20 incident. He required hospitalization for ten days and
21 surgery. She indicated that her son still carries the bullet
22 in his body which is lodged under his rib cage.

23 "Mrs. Sanders stated that her son has been afraid to
24 leave his house unless in a car, since the date of the
25 incident. He finds it necessary to take a taxi cab to school

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

1 each day. She also relates that his school work has fallen
2 off substantially since the incident occurred. He has become
3 withdrawn and does not like to talk about the offense."

4 Then P-19 is a judgment of conviction with respect to
5 that crime.

6 With respect to the next incident marked as 11/5/91
7 on page 15B, the Government has a judgment of conviction with
8 respect to that charge that the jury will have.

9 With respect to the 12/7/91 incident which is the
10 incident that was testified to by Inspector Davis, P-3 is
11 already in evidence. The jury will have that.

12 With respect to the next incident, working our way
13 down, there is a judgment of conviction marked as P-4.

14 P-16, which is another presentence report with
15 respect to that incident. In that P-16 -- the jury can read
16 that.

17 Working our way down to the 12/31/97 incident, there
18 is a judgment of conviction which speaks to that conviction,
19 P-18.

20 The final incident at the bottom, November 14, 2002,
21 there is an arrest report and to read a passage from page
22 three of P-12, the Newark P.D. incident report, "The units
23 were traveling northbound on South 17th Street when we
24 observed an individual standing in front of 788 South 17th
25 Street. This individual was holding in his hands what looked

JOANNE M. CARUSO, CSR, CRR, OFFICIAL COURT REPORTER, TRENTON, N. J.

6383

1 like a stick. We got closer to the location. The black stick
2 looked like a black sword. We exited our vehicles, we asked

3 the individual what he was holding. He stated it was a stun
4 gun that he keeps with him for protection."

5 He was convicted -- judgment of conviction evidencing
6 that conviction is P-11.

7 The last thing is P-17, again, which we will redact
8 and not read from the redacted portion. P-17 is speaking to
9 the incident on 12/31/97.

10 The charge of conviction was possession of a weapon
11 by a convicted felon in violation of New Jersey statute
12 2C: 39-7.

13 Summary of the offense is as follows: "On 12/31/97,
14 officers of unit 412 were dispatched to a 637 (assault in
15 progress call). Upon the officers arrival, they observed the
16 defendant insert a black gun in his waistband area and jumped
17 into a 1994 black Cadillac, New Jersey registration RYE 617T.
18 The vehicle fled the scene south on North Munn, then made a
19 right onto Mountain View. The vehicle then proceeded to
20 travel west, making a right on Chelsea Avenue.

21 "The officers attempted to pull the vehicle over by
22 using their lights and siren. The officer pulled the vehicle
23 over at 50 Chelsea Avenue and told the defendant to exit the
24 vehicle over the PA system. Defendant shut off the vehicle,
25 exited the vehicle.

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6384

1 "Officers noticed a black handgun sticking out of the
2 defendant's left jacket pocket, which later turned out to be a
3 green Dell Ink 22 magnum automatic handgun. The weapon
4 contained a clip of 29 hollow point bullets."

5 I just have to check the documents, that may be it.

6 THE COURT: All right.

7 Do you have anything further?

8 MR. MINISH: Just one second, Judge.

9 There is a legal issue we need to resolve with some
10 documents, but there's nothing we need for the jury. We can
11 resolve this with your Honor and rest first thing in the
12 morning.

13 THE COURT: You don't have any further evidence
14 other than what it is you need to discuss with me?

15 MR. MINISH: Subject to your Honor's ruling, we just
16 may have another document or two going in.

17 THE COURT: That's it for the Government's
18 presentation?

19 MR. MINISH: Subject to that, yes.

20 THE COURT: Fine.

21 We'll break for the day, folks.

22 Would you mind taking that down?

23 MR. MINISH: Yes.

24 THE COURT: You are excused for the day and we'll
25 get started tomorrow as soon as close to 9:15, 9:30 as we can.

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6385

1 As I have been instructing you throughout, again now
2 more than ever, it's important that you keep an open mind, do
3 not begin formulating an opinion as to what your decision is
4 going to be here until you've heard everything, including all
5 of the evidence, arguments and final legal instructions.

6 Don't discuss the case with each other, don't discuss

7 the case with anybody outside this courtroom nor should you
8 permit anyone to discuss it with you and please, do not come
9 into contact with any newspaper articles, magazines,
10 television shows or movies that touch upon the subject matter
11 of this case in any way.

12 That being said, you're excused. Travel safely,
13 we'll see you tomorrow.

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6386

1 THE CLERK: All rise.

2 (Jury is excused and the following takes place out of
3 the presence of the jury.)

4 THE COURT: Have a seat everybody.

5 While we're waiting for the jury to collect
6 themselves, I would ask you, counsel, to start thinking about
7 a verdict form. If you can give me a draft of a form, I would
8 appreciate it.

9 The record ought to reflect I had a conversation with
10 counsel about excusing alternate juror number five, who is 65,
11 45, who had a request based on his daughter's graduation in
12 North Carolina. I understand there's been no objection to me
13 excusing him, so I have told him, based on that conversation,
14 that he's free to leave at the end of the day today. Okay.

15 MR. HERMAN: Okay.

16 MR. FRAZER: One brief application when the jury is
17 gone.

18 THE COURT: Let's let the jury go and we'll deal
19 with it. We can talk about whatever it is, this problem is.

20 MR. FRAZER: Okay.

21 THE COURT: Fine.

22 MR. FRAZER: We resolved the documents. We're not
23 going to actually introduce them for our case in chief so that
24 issue is resolved.

25 The application I had to do with the videotape. I

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6387

1 understand your Honor's already made a ruling. Here's the
2 issue. It's a discovery issue actually.

3 The Government has not been provided with any notes
4 of the, I don't know if it's a social worker, some term that
5 counsel used yesterday, but the woman in the video is some
6 type of social worker I imagine.

7 We don't know exactly who she is or anything like
8 that. There's two applications.

9 First is the notes which were clear in the video that
10 she was -- she had, I think we're entitled to. We're

11 obviously not allowed to cross-examine, I don't want to say
12 not allowed, we consented to the fact that it was a
13 seven-year-old girl, we're not allowed to cross-examine and
14 that's fine.

15 We are entitled to discovery as to anything to do
16 with the creation of that videotape, because we can't combat
17 it otherwise.

18 I would ask for any notes of the social worker.

19 I would also ask, Judge, the Government is
20 contemplating calling that person as a witness on rebuttal.
21 We would ask that the defense give us her information and make
22 her available. Because of the short notice that we have, we
23 can try to subpoena her but obviously basically tomorrow,
24 maybe Thursday morning and they have control over her.

25 She was hired by the defense I imagine, so we would

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6388

1 ask that she be available Thursday morning or late tomorrow
2 afternoon, depending on the Court's schedule because we may
3 call her to rebut some of the things in that tape. She
4 created the tape, Judge, obviously. We should be entitled to
5 question her about the tape.

6 MR. HERMAN: Fine.

7 THE COURT: All right.

8 Make her available tomorrow?

9 MR. HERMAN: We will.

10 THE COURT: What is her name?

11 MR. HERMAN: Her name is Lois Nardone.

12 THE COURT: Miss Nardone.

13 MR. FRAZER: I'm not trying to inconvenience anybody.
14 THE COURT: Have her here tomorrow, we'll give you
15 an opportunity to speak to her and see where we go.
16 And the notes, I assume, we can get.
17 MR. HERMAN: I'll ask her if she has any notes. The
18 notes of the conversation with the seven-year-old?
19 MR. FRAZER: Any notes that she created in relation
20 to the conversation with the seven-year-old.
21 MR. HERMAN: Okay. Absolutely.
22 THE COURT: Okay.
23 Thank you.
24 THE CLERK: All rise.
25 (Trial adjourned until Wednesday morning, May 9,

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6389

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